



KIOCL LIMITED
Vigilance Department



VIGILANCE NEWSLETTER

JANUARY 2022



Vigilance Newsletter

January 2022

Vigilance department wishes all the employees and their families a very Happy New Year.

We thought of ringing in the New Year with a new initiative by issuing a quarterly Vigilance Newsletter.

The effort of Vigilance Department is to help the Company and its employees to prosper by working smartly while maintaining high level of integrity. To achieve this, it is essential to keep ourself abreast of Rules, Regulations and Guidelines and ensure no avoidable mistakes are committed during day to day working. We must upgrade our skills and constantly improve by adopting technology and learning from the experience of others by sharing best practices as well as shortcomings.

It is with these objectives in mind that this Newsletter has been started where it will be our endeavour to share relevant communications received from Central Vigilance Commission, Government of India as well initiatives taken by other organizations in areas of systemic improvement and preventive vigilance which can be a model for adoption to improve our working. Articles on relevant topics would also be shared which would add to the knowledge as well as benefit the employees.

1st January 2022

Chief Vigilance Officer

Contents

1. Circulars/Notifications/Guidelines issued by Government of India

- General Instructions on Procurement and Project Management issued by Department of Expenditure, Ministry of Finance dated 29-10-2021 [[view](#)]
- Model Tender Document for Procurement of Goods issued by Department of Expenditure, Ministry of Finance dated 29-10-2021 [[view](#)]
- Model Tender Document for Procurement of Non-Consultancy Services issued by Department of Expenditure, Ministry of Finance dated 29-10-2021 [[view](#)]
- Insertion of Rule 227A in General Financial Rules 2017-Arbitration Awards issued by Department of Expenditure, Ministry of Finance dated 29-10-2021 [[view](#)]
- Guidelines on Debarment of firms from Bidding issued by Department of Expenditure, Ministry of Finance dated 02-11-2021 [[view](#)]

2. Circulars/Notifications/Guidelines issued by Central Vigilance Commission

- Timely finalization of Departmental Inquiry Proceedings - improving vigilance administration 03/12/2021 [[view](#)]
- Timely finalization of Departmental Inquiry Proceedings- improving vigilance administration 08/12/2021 [[view](#)]
- Adherence to the provisions of Standard Operating Procedure (SOP) for implementation of Integrity Pact- regarding. 20/12/2021 [[view](#)]
- Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis 20/12/2021 [[view](#)]
- Comprehensive guidelines on Complaint Handling Mechanism 24.12.2021 [[view](#)]

3. Other Important Notifications, Orders and Guidelines.

- General Financial Rules (GFR) 2017 [[view](#)]
- Amendment to Rule 170--i of General Financial Rules -GFR 2017 [[view](#)]
- Amendments to Rule 152 of General Financial Rules -GFR 2017 [[view](#)]
- Preventive vigilance in public procurement [[view](#)]
- Common irregularities/lapses observed in stores/purchase contracts and guidelines for improvement in procurement system [[view](#)]
- Illustrative check points for various stages of public procurement [[view](#)]

4. Systemic improvements and Preventive Vigilance initiatives

- ERP Payment related Improvements in Hindustan Aeronautics Limited
- Biometric Access Control System for Contract Employees in MRPL
- Online Gate Pass System for Material Entry in Bharat Dynamics Ltd

5. Article on Doctrine of Contra- Proferentem in Contracts Management.

Preventive Vigilance

ERP Payment related Improvements in Hindustan Aeronautics Limited (HAL)

1.0 Brief Description of the Measure/Initiative

The initiative is to minimize the risks in payment process through implementation of checks & balances and segregation of duties for payment. Checks and balances provide a system level control to prevent erroneous payments either intentionally or unintentionally. Segregation of duties ensures that payment advice and approval have to be done by different agencies to minimize the possibility of fraudulent payment.

1.1 Background

Payment process in the ERP is a critical area, where continuous monitoring is required. Monitoring the Checks & Balances in the system and ensuring adequate segregation of duties for Payment related transactions is an important requirement from the Governance & Risk Compliance (GRC) perspective.

1.2 Implementation

To minimize the risk and to avoid fraudulent payment, following steps have been put in place:

1. Identified the payment areas where risk is maximum like Vendor creation, Updating of vendor bank details, creation of supplier invoice and creation of mixed payment.
2. Various checks and balances introduced in ERP for the above identified areas to control the risk obtained.
3. Introduced periodic cross divisional audits in all divisions of HAL to ensure that all controls and guidelines issued are adhered to.
4. Monitoring of compliances through on-line portal.

List of important checks and balances implemented:

- Trigger for 3-way match between Invoice, Receiving Report (RR) and Purchase Order.
- Payment to be made only through mixed payment screen, where a system control – two level authorization (creator and approver) is available.
- Advance payment to supplier against Purchase Order (PO): A trigger has been incorporated to check that two level authorization is enabled.
- Prevent modification of the PO while receiving incoming material.
- Creation of web enabled local software for users to create invoice for note-sheet payments (other than PO/Civil/Labour) which will ultimately be pushed in Integrated Financial System (supplier invoice Screen / Mixed payment for Vendor and employees respectively). This will separate the payment advising authority with paying authority.
- Segregation of duties to avoid RR Creation and material acceptance by same person.
- Prevents changing of bank account of supplier and make unauthorized payments.

1.3 Impact and Benefits

The implementation of the system will have a long-term impact in minimizing the occurrence of fraudulent transactions. It also helps in maintaining the Governance & Risk Compliance (GRC) status of the Company at a high level.

1.4 Potential for Reliability

The controls are monitored at various levels through monthly reports. The system is also audited periodically to check for any exceptions. Hence, sustainability & reliability of the system has been ensured

Preventive Vigilance

Biometric Access Control System for Contract Employees in Mangalore Refinery and Petrochemicals Limited (MRPL)

1. Brief Introduction

To avoid misuse of punch card-based access system by contract employees, Biometric punching using iris recognition/finger print has been implemented for contract employees.

2. Background

For attendance of contract employees MRPL was earlier using Punch card. During entry and exit, contract employees were doing in-punch and out-punch at punch machines placed at strategic locations. The instances of misuse of punch card system were noticed like single person punching card on behalf of absent person and multiple contractors using same person under different contract.

3. Implementation

Biometric fingerprint punching system was introduced for contract employees in the year 2018 as applicable for regular employees after their verification through Aadhaar card/ Passport. As fingerprint is unique feature for every person, misuse by contract employees is prevented.

4. Impact and Benefits

- Elimination of time theft and punching on behalf of another contract employee.
- Accurate picture of contract employees to the payroll department.
- More reliable and accurate attendance record eliminating cases of dispute.
- Proper ensuring of PF & ESI subscription.
- Overtime claims more reliable and easily verifiable.
- Good database to estimate how many contract employees are typically required for particular nature of job especially during turnaround period.
- Easy and safe to use by contract employees.
- Exact information of contract employees' number at any point of time in case of any emergency in the Plant can be obtained for emergency evacuation

5. Potential for Replicability

This system can be implemented in any organization where contract labour is deployed regularly on a large scale

Systemic Improvement

Online Gate Pass System for Material Entry in Bharat Dynamics Ltd (BDL)

1. Brief Description of the Measure/ Initiative

Online Material Entry Gate Pass System was introduced and implemented across units of the Company with effect from Dec-2020 which captures details like Purchase Order No., receipt of no. of items against PO, vehicle no., driver details, in-time, out-time, etc.

2. Background

As per the earlier system, materials were to be brought inside the company premises with an Inter-departmental written/typed note addressed to Central Industrial Security Force (CISF) indicating Order no., Vehicle details, etc. CISF records the details of Delivery Challan (DC), Vehicle in & out time, checks the materials as per DC, and permits the vehicle to deliver the materials inside company premises. During scrutiny of a civil work in one of the units of the company, it was observed by the vigilance wing that as per the records of the Cement Register maintained by the Contractor & Civil Engineering Department, 3120 Cement Bags were stated to be received at Workstation/Site vide 14 Delivery Challans and 3132 Cement Bags were stated to be consumed during the execution of the said Civil work. However, as per the records available with CISF, only 1120 cement bags were brought inside vide 10 Delivery Challans with entries in the CISF register. The Contractor had forged CISF entries of the Delivery challans and made a fraudulent claim.

From the above instance, it was noticed that checking/keeping track of the multiple delivery challans against purchase orders manually was leaving scope for manipulation and forgery of documents causing loss to the organization. In another case for supply of Provisions for Canteen, it was observed that the vehicle carrying provisions was inside the company premises for more than 6 hours. From this instance, it is noticed that there was no tracking mechanism on the movements of outside vehicles inside the company premises, which is dealing with sensitive items.

In order to overcome the shortcomings of the manual system mentioned above, an online material entry system was developed and implemented which captures details like Purchase Order No., receipt of number of items against PO, vehicle number, driver details, in-time, out-time, etc. The online system is accessible to the user department/indenter and CISF and reduced the instances of manual intervention, easy retrieval of data, tracking of vehicle movement, and minimizing scope of manipulating the documents.

3. Implementation

The online entry gate pass system was designed and developed by an in-house IT team with inputs from Commercial department and CISF.

4. Impact and Benefit

Following are the key benefits of the implementation:

- The online entry gate pass system brought in transparency and accountability in the system while dealing with incoming materials/ provisions to the premises as manual intervention is reduced. Thereby, the scope for corrupt manipulations is reduced.
- The system also facilitates check on the movement of the vehicle inside the company which otherwise had a potential threat, as BDL is a defence organization. · With the implementation of online entry pass system, the quality of the entry system is improved which will be beneficial in the long run.

5. Potential for Replicability

The online entry gate pass system has the potential for replication by other organizations as this system is developed to address issues of material/ provisions entry into company premises which is a routine but important daily aspect in many CPSEs.

Doctrine of Contra- Proferentem in Contracts Management (Nirmal Goel, Technical Examiner, CVC)

Occurrence of disputes is common feature in civil construction contracts. Often the disputes arise because of contract clauses which can be interpreted in more than one way. The job of arbitrator/ court becomes more difficult when various interpretations argued by the parties to the dispute are equally good, reasonable and plausible. In such circumstances, the Doctrine of Contra- Proferentem becomes a handy tool to the arbitrator or the judge to decide the matter in accordance with principles of equity, good conscience and justice. This doctrine, which originated from insurance contracts, states that when a contract provision can be interpreted in more than one way, the Court will prefer that interpretation which is more favourable to the party who has not drafted the agreement (or simply that interpretation which goes against the party who has inserted/insisted on inclusion of the alleged ambiguous clause in the agreement.

The rationale behind this doctrine emanates from the fact that parties to the agreement are often not in equal position. One party dominates the execution of the agreement while the other party merely signs on the dotted line. Such contracts are mainly “standard form take it or leave it” contracts e.g., in insurance contracts, an individual usually has to accept all terms and conditions of insurance policy document framed by the insurer company with no liberty on part of the individual to negotiate or alter the conditions of the contract. Similar is the situation in Government contracts, wherein the tender notices floated by Government agencies prescribes that the bidder will not put any condition in the tender. The bidder is simply made to sign on the dotted lines and no deviation from the tender conditions is permitted. Therefore, this doctrine is very much applicable in the contracts entered into by the State with various private parties/contractors.

Another underlying philosophy behind this doctrine is that one should not be rewarded for his own fault. Contra- Proferentem places the cost of losses on the party who was in the best position to avoid the harm. The Courts/Arbitrators expect that the party who drafts the agreement shall take due care and caution and shall not insert ambiguous provisions in the agreement. The doctrine seeks to encourage clear, explicit and unambiguous drafting of the agreement and to avoid latent and hidden meanings of its clauses.

However, this doctrine is not to be construed to encourage unreasonable or inequitable interpretation against the drafter of agreement. It is applicable only when the various interpretations are equally sound, reasonable and plausible and no clear intention contrary to the interpretation being adopted on this principle is prima facie evident in the contract document.

Unconditional tenders are unavoidable necessity in Government contracts. In such scenario, it becomes an added responsibility on the part of NIT framers, checkers and approvers to read, re-read and re-re-read the various provisions of the tender document and ensure that its various provisions are clear, explicit and unambiguous. For carrying out this responsibility, a) the latent, hidden or implied meanings to contract clauses are to be avoided; b) the contract conditions need to be realistic; c) all information required for working out rates by prospective bidders needs to be given in the tender document; d) technical specifications and mode of measurements should be clear; and e) the tender document should take care of various contingent event. Since many of the construction disputes are repetitive in nature, one should take lessons from them and prescribe proper provision in the tender documents to deal with them.

Besides above discussion, this doctrine has got vigilance connotation also. Many a times, ambiguous provisions are interpreted in favour of contractors. In such case, the Vigilance Organization first disputes the ambiguity itself and tries to assert that there has been an attempt to create ambiguity when there was none and then tries to search malafide angle in such interpretation especially when such an interpretation has resulted into passing of undue benefits to the contractor or has caused loss of public money. So, by carefully preparing tender documents, NIT framers, its checkers and approvers can protect their officials from unnecessary vigilance scrutiny also.

In essence, the doctrine of Contra-Proferentem puts an added responsibility on framer, checkers and approvers of tender documents and emphasizes additional efforts on their part to avoid ambiguities and to make contract documents clear, explicit and unambiguous in nature. Further, it requires tender documents to be complete ones so as to take care of not only foreseeable but unforeseen circumstances also.

Note: This Article has been published in the Magazines: -

1. Crystal Clear, Airports Authority of India Vigilance Magazine (Oct. 2010 issue)
2. Civil Engineering & Construction Review (Dec. 2010 issue).
3. Indian Institute of Arbitration and Mediation (IIAM) Magazine "The Indian Arbitrator" – (January 2011)
