

**JAWAHARLAL NEHRU PORT TRUST
(VIGILANCE DEPARTMENT)**

JNP/VIG/SI/2020/ 491

Date: 07.09.2020

CIRCULAR No: 01/2020

Sub: Levy of arbitrary fine in lieu of labour licence

I. Facts of the Case:

- 1.0. An intensive examination of one of the contract case was carried out by Vigilance Department as per CVC guidelines. During the examination of the case following facts were noticed.
- 2.0. The contract was awarded for one year from August 2015 to July 2016. The executing department could not finalise the follow up contract before expiry of existing contract resulting in multiple extensions.
- 3.0. One of the contract clause stipulated that 'the contractor should provide labour license within either 15 days from the date of issue of acceptance letter or from actual date of work commencement, whichever earlier.'
- 4.0. The contractor submitted the labour license for the period August 2015 to July 2016 only.
- 5.0. During the contract extension period contractor has neither submitted the labour license nor the department has made any attempt to obtain it from the contractor.
- 6.0. The executing department imposed a penalty of Rs. 7,000/- per year on contractor for non-submission of labour license during extended contract period without any knowledge and approval of competent authority.
- 7.0. This act of executing department to obtain the penalty of Rs. 7000/- per year was not predefined in tender conditions/agreement and was levied arbitrarily by the department officials. This amount was deducted from the vendor's bills.

II. Observations:

- 1.0 It is necessary that the contracts which are essential to be active for smooth working of the port must be monitored closely and the process for issue of fresh tenders should be initiated well in advance so that the contracts are finalized well in time and there would be no occasion to extend the contracts beyond the contractual period/conditions.
- 2.0 Award of the extended contract without the valid labour licence amounts to placement of the contracts on unsuitable vendor and is irregular and unlawful.
- 3.0 The contractor must possess all the required documents as per tender conditions/eligibility conditions during the currency of contract including extended period.
- 4.0 Levy of fine arbitrarily, which is not provided in the contract documents or in any guidelines, in lieu of non-submission of mandatory documents in a contracts is irregular and it tantamount to favouritism to the ineligible vendor.

- 5.0 Finance deducted the penalty from the bill submitted by the vendor without any scrutiny whether the any provision was available for any such deduction in the contract and whether the levy of such penalty is as per the extant provisions.

III. SYSTEM IMPOROVEMENT SUGGESTED:

- (i) All-important clauses pertaining to EMD, completion schedule, performance bank guarantee, payment terms, penalty for delayed completion and for non-submission of documents, insurance, contractors' liability, labour welfare, arbitration, etc. need to be incorporated and predefined in the tender document in a proper and explicit manner so as to fully safeguard the interest of organisation.
- (ii) After signing of agreement, any relaxation/deviation/addition in contract terms/specifications should be discouraged. In case it is necessary it should be done as per the extant rules and with the approval of competent authority.
- (iii) It must be ensured that all the necessary labour licences/ other licences and documents etc. which forms the part of original contract and are valid during the original contract period should also remain valid during any extended period of the contract. While processing any extension proposal all such items are brought out and the contract should be extended only when those conditions are met by the vendor even during the extended period.
- (iv) Levy of financial penalty in lieu of eligibility documents as well as mandatory licences including labour licences while extending the contract is avoided, since it will vitiate the original contract and tantamount to favouritism to the ineligible vendor.
- (v) Finance while clearing the bill must ensure that there are no undue and irregular deductions made, from the bills of the vendor, which do not form the part of the contract conditions.

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Chief Vigilance Officer
07/09/2020

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- 1. PS to Chairman: For Information of Chairman
 - 2. PS to Dy. Chairman: For Information of Dy. Chairman

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**JAWAHARLAL NEHRU PORT TRUST
(VIGILANCE DEPARTMENT)**

JNP/VIG/SI/2020/ 492

Date: 07.09.2020

CIRCULAR NO. 02/2020

Sub: Ambiguous condition in the work order

Background:

1. Recently Vigilance Deptt has carried out intensive examination of one of the contract works in JNPT as per CVC guidelines.
2. The contract was awarded for one year from 1 August 2015 to 31 July 2016 however the work order was placed on 11.08.2015 to a new contractor mentioning that the contractor to commence the work from 1.8.2015.
3. Total 55 contract workers were engaged by both the contractors and contract workers were the same for both contractors.
4. The new contractor claimed bill for the full month of Aug 2015 i.e. from 01.08.2015 to 30.08.2015 while the earlier contractor has not been paid nor he claimed payment for first 10 days of August Month.

Observations:

1. It appears that the new contract has been placed on 11.8.2015 and the condition of starting the work from 01.08.2015 has been mentioned without considering the fact that the execution of the contract cannot be done before placement of contract. This condition is unclear and ambiguous.
2. Even though there is no over payment made to the contractors, the terms and conditions in the contract can be suitably modified to take care of the situation as in the present contract and there should be no presumption and ambiguity either in the terms and conditions as well as in the contract. (Refer CVC circular no.01/04/14 dtd 29.4.2014)
3. It brings out a questions as to how can any new contractor claim a bill for a period when there is no contract with them/letter of acceptance on them.

System Improvement suggested:

1. In any labour outsourced contract wherein the labours are constant, suitable clause can be added to take care of the time period during which there might be situation of overlapping time periods.
2. Although attempt should be made to place the new contract before expiry of the old contract and the new contract can commence only on the 1st day of the month. However, in case this is not feasible, a tender clause can be added in the tender document stating that in case order is placed on any date during a particular month, the new contractor shall claim the bills for entire month based on the records available for this period and the old contractor shall claim the bill only up to the previous month end. However, old contractor shall produce all attendance records of the current month also till the new contract is placed.

Also, in case the old contract is operative while finalisation of the new contract and is to be closed then the old contract can continue to operate till completion of the month and the new contract can continue to operate during the next month onward.

3. Suitable tender clause can be added in the tender document to ensure transparency and avoid ambiguity.

Action taken on above suggested system improvement may be issued to all concerned officials with intimation to Vigilance Deptt within 10 days.

If for any specific reasons the system improvement suggested is not proposed to be implemented, the same may be conveyed to Vigilance Deptt. mentioning the reasons for any such non-compliance.



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**JAWAHARLAL NEHRU PORT TRUST
(VIGILANCE DEPARTMENT)**

JNP/VIG/SI/2020/ 493

Date:07.09.2020

CIRCULAR NO. 03/2020

Sub: Marking attendance on Public Holidays

Background:

- 1.0 Recently Vigilance Deptt has carried out intensive examination of one of the contract works in JNPT as per CVC guidelines.
- 2.0 The contract was awarded for one year from August 2015 to July 2016.
- 3.0 Total 55 contract workers were engaged for this contract. As per terms and conditions of this contract 05 public holidays were given to all the contract workers. 15th August, Independence Day, was one of the public holidays given to all contract workers.
- 4.0 During scrutiny of the man power sheet submitted to Finance Deptt, it was observed that all the 55 contract workers were found "**marked present**" on 15th Aug 2015 even though this was a public holiday.
- 5.0 The executing department clarified that all 55 contract were given holiday on 15th August and no extra payments have been made to the contractor.

Observations:

- 1.0 If a contract worker marked present on manpower sheet for any public holiday even though the contract worker avails public holiday, it can be construed as extra work performed by the contract worker and then it becomes mandatory to compensate the extra work as per rules.
- 2.0 This should be avoided by adopting a uniform methodology while preparing monthly manpower attendance sheet.

System Improvement suggested:

- 1.0 All departments which are engaging contract workers for various activities in their departments/sections must ensure that all contract workers should avail public holiday as per the tender conditions and whenever such public holidays are availed by them, they should be suitably marked like '**PH**' instead of "**present**" in their monthly manpower attendance sheet while submitting to Finance Deptt along with monthly bills.

Action taken on above suggested system improvement may be issued to all concerned officials with intimation to Vigilance Deptt within 10 days.

If for any specific reasons the system improvement suggested is not proposed to be implemented, the same may be conveyed to Vigilance Deptt. mentioning the reasons for any such non-compliance.



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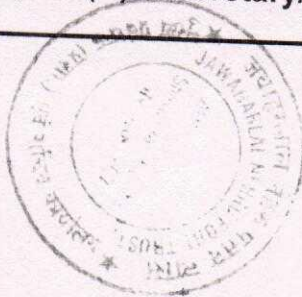
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**JAWAHARLAL NEHRU PORT TRUST
(Vigilance Department)**

No JNP/VIG/Pumps/2020/495

07.09.2020

CIRCULAR No : 04/2020

Sub: Procurement of Spares from Authorized Dealers

I. Facts of the Case:

- 1.0. In a case investigated by Vigilance Department, an indent was submitted by the Engineering Department to Materials Section for supply of spares for an equipment indicating make of equipment, part number of spares. While submitting the indent, Indenting Department neither mentioned that the procurement is to be made only from the manufacture nor submitted proprietary article certificate.
- 2.0. Materials Management Department initiated the procurement and obtained budgetary offers from only two vendors and average rate of both the offers was considered as budgetary cost of the tender. The enquiry was published on CPP Portal in addition to that a few Vendors were intimated by mail. The tender submission date of 13.11.18 was extended to 20.11.18 based on the request of one Vendor.
- 3.0. Two offers were received. The lowest offer was considered not technically suitable as they did not have "a valid authorized dealership certificate" from the manufacturer. The other Vendor (who also gave budgetary offer) submitted authorized dealership certificate and also produced a letter from the manufacturer that they (L-2) are the only authorized dealer. Accordingly, the order was placed on L-2 Vendor at the rates quoted by them.

II. Observations:

- 1.0. The budgetary offers were obtained from the two vendors and rate difference between the two rates was about 80%. One of the vendor also was not the authorized dealer who quoted higher rates. The budgetary offer was obtained without mentioning about authorized dealership and the final tender was floated mentioning authorized dealership. In this case the estimated rates became high due to 80% higher rates offer from the non-authorized dealer, which resulted in placement of order at higher rates, considering only the estimated rates.
- 2.0. In this case the requisition from the Indenting Department was received without mentioning that the item is to be procurement only through the manufacturers nor they had given any proprietary article certificate. The description in the indent was having only part number and it was imperative that the open tender without detailed description may not fetch offers. Without asking any

clarification from the indenting branch, Materials Management Department floated the open tender incorporating the clause "authorized dealer should submit dealership certificate at the time of submission offers". It was not clearly mentioned that the authorized dealers of the manufacturer shall only be considered for acceptance of the tender. In case the intention was to consider the offer only from the authorized dealer then it should have been more clearly mentioned and the proprietary article certificate should have been obtained, which was not done in the instant case.

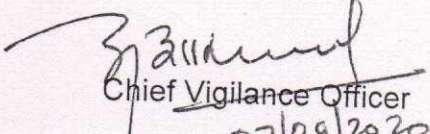
- 3.0. The tender opening Date was extended by one day based on the request of one of the firm. However, no specific approval of the competent authority was obtained for doing so. The order was finally placed on this firm.
- 4.0. Both the L-1 & L-2 tenderer submitted the dealership certificate, however, based on the letter received from L-2 Vendor that they are the only authorized dealer of the manufacturer and based on the letter of L-1 Vendor, communicating the wrong submission of dealership certificate, the offer from L-1 was ignored without making any communication with the original manufacturer to ascertain the facts even when there was disputes on dealership certificate, presuming that the letter from the manufacturer given by the L2 vendor is sufficient to prove that. The authenticity of this letter was also not verified.
- 5.0. The order was placed on L-2 Vendor who also had submitted the budgetary offer. The order rate was about 20% higher than the budgetary price given by the same firm. However, no communication in this regards was made with the Vendor especially because, he being the authorized dealer, cannot charge arbitrary price which cannot vary by 20% within 2 months unless it has been revised by the manufacturer. No such counter verification has been done. The offer was accepted considering only the estimated rates which is based on average price. In this case it was observed that the price of L-1 tenderer, whose offer was ignored, was in the range of the rates quoted in the budgetary offer by L-2 Vendor and they were also technically not unauthorized dealer, just that they were only not authorized to participate in JNPT tender. This was not verified from the manufacturer. Since L1 rates were available it was responsibility of the procurement official to check the reasonableness of rates.
- 6.0. Finance had observed that since the subject purchase was initiated for the first time and only single party is qualified, the tender can be discharged and re-invited. However, the case was accepted mentioning that they are the only authorized dealer for the manufacturer and re-tendering will not help. However, PAC was not obtained from the Indenting Department.
- 7.0. It is a fact that normally vendors quote higher rates in the budgetary offers to avoid exposure of their rates and in the regular tender they normally quote lower than the rates quoted by them in budgetary offers. However, in this case there was increase in rates to the extent of 20% from the budgetary offer in just 2 months' period. The reasonableness of rates was not checked nor the firm was asked any clarifications. The rates were considered reasonable based on estimated rates. This was all the more necessary when the single offer was being considered for acceptance and L1 rates being 20% lower.

- 8.0 It was also seen that the firm while submitting budgetary offer quoted 18% GST for some spares and 28% GST for some spares but quoted uniform 18% GST for all spares when quoted in the regular tender. L1 firm quoted 28% GST for all spares. This anomaly was neither seen and not clarified.
- 9.0 It is seen that L-1 & L-2 both the offerer were authorized dealers of manufacturers, however, L-1 tenderer was not authorized dealer for JNPT Tenders and therefore, this information should have been used for negotiating the rates with L-2 Vendor as L-1 tenderer was at 20% lower rates, on par with budgetary offer of L-2 firm.
- 10.0 It is also seen that the procedure laid down in the JNPT's Manual for Procurement of Goods-2018 for obtaining budgetary offers and arriving at estimated cost is not followed in this case.

III. SYSTEM IMPROVEMENT SUGGESTED:

- (i) While obtaining the budgetary offers, some important conditions must be indicated which may affect the financial quotes. Whenever there is huge difference in the budgetary offers, specific attention is required to be given to know the reasons for such a huge variation while finalizing the tender and arriving at reasonableness of rates.
- (ii) Before initiating the procurement through open tender, it is necessary to ensure that the description and specifications are complete and the vendor shall be in a position to give offer based on this description. There should be no ambiguity or incompleteness in the tendered description/specifications and drawings.
- (iii) Whenever procurement is arranged from the manufacturer or their authorized dealer, proprietary article certificate should be obtained from the Identifying Department, duly signed by the Competent Authority, based on the value of the purchase for which suitable schedule of power can be formulated if not already available.
- (iv) Procurement through the authorized dealers or the manufacturer should be with clear indication in the tender documents that the procurement shall only be arranged either from the manufacturer or from their authorized dealer, whenever it is published on the portal, to avoid ambiguity. The clause "authorized dealer to submit authorized dealership certificate" is ambiguous & does not signify that procurement shall be done only from the authorized dealer.
- (v) Whenever there is dispute regarding authorized dealership, the manufacturer should be directly approached by the Department and one should not rely only on the letter received from one of the vendors who participated in the tender.
- (vi) Whenever there are no previous procurement prices and the estimation is based on the budgetary offer, the reasonability of the rates has to be ensured by the procurement officials and specific reasons should be mentioned for reasonability of the rates. Normally the rates of the spares of the manufacturer are revised by the manufacturer themselves and authorized dealers can't increase rates arbitrarily. Hence there should be no

- hike in budgetary rates of the authorized dealer within a span of a few months, unless the price list has been revised by the manufacturer which has to be verified by the procurement officials.
- (vii) In each purchase case specific remarks must be given for the reasonableness of rates, indicating how the rates are considered reasonable and estimated rates cannot be the sole criterion.
- (viii) The procedure for arriving at estimated cost and obtaining the budgetary offers as per para 2.5.10 of JNPT's Manual for procurement of Goods -2018 should be strictly followed and in case of any deviation, approval of the competent authority should be obtained, giving the reasons.
- (ix) After floating of the tender, the tender opening date (TOD) should not be extended. In case it is considered necessary to extend the TOD, it should be done after recording the reasons and with the approval of the competent authority.


Chief Vigilance Officer
07/09/2020

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