

## MINUTES

# “Focus Group Discussion with Independent External Monitors on Integrity Pact”

12<sup>th</sup> September 2014 (2:00 am to 5:00 pm)

Lecture Room2, India International Centre Annexe, Lodhi Road, New Delhi-110003

### Welcome Speech: Dr. S. K. Agarwal, Chairman, TII

Dr. Agarwal welcomed all distinguished guests and conveyed thanks to all for their gracious presence. He described TII's projects and activities in anti-corruption movement briefly.

### Address by Mr. G. M. Garg, Former Vigilance Commissioner



Initiating the Focus Group discussion, Mr. Garg stated that he has witnessed the implementation of Integrity Pact since it was introduced in December 2007 and stressed that given the fact that the total procurement which is taking place in our country in terms of various contracts by central PSUs, government departments and state PSUs comes up to around 25% of the total GDP, role of IP and IEMs assumes greatest significance. Lack of Integrity Pact in PSUs results in high cost of procurement, poor quality, delays

and issues related to safety and security of public that need to be addressed. Drawing on his own experience in the commission during the last four years, he stated that much emphasis has been laid on transparency through technology. He emphasized the need for a comprehensive law and public procurement policy framework, strict implementation of anti-corruption laws and a nation-wide campaign to bring integrity into the system. The beginning of the practice of incorporating capacity building and sound corporate governance practices among all stakeholders would in the opinion of Mr. Garg result in substantial savings for the country. He further stated that India now needs huge investment to the tune of 1 trillion dollar in the infrastructure domain in the next five years for the economy to come back to growth of 7-8%. It is in this context that the mechanism of Integrity Pact and role of IEMs assumes great significance. He informed that CVC has held one meeting with the IEMs as well as the CVOs and CEOs to review this process and there is already a mini-legislation. He shared some of the issues, key findings and suggestions that were discussed in the meeting that was held on Aug 2013. One of the issues that came up was that monitoring stops after the award of contract which means that the IEM role extends only till the contract is awarded. Another point raised was the need for an audit mechanism for IP. He stressed the need for a Compliance officer at the senior level to be appointed by each concerned organizations as it is not possible for IEMs to monitor each and every procurement contract. He further touched upon the need for support staff and infrastructure for IEMs, comparative study of the contract management and projects to

understand the best practices followed by each organization so that they could be opted by others and the need for IP to cover all contractors. He also pointed out that some of the CEOs are not fully conversant with the concept of IP and therefore the desired support for implementing it is lacking. The uneven implementation of IP in various organizations, lack of regular meetings of CEOs and IEMs, the limited dissemination and discussion of annual reports and findings, the fact that suggestions of IEMs are seldom uploaded on websites of the concerned PSUs reducing the role of IEMs to complaint redressal, the non-uniformity in the sitting fees paid to the IEMs and the fact that at times all necessary documents required by IEMs are not given making it difficult for them to arrive at an informed decision have hampered the effectiveness of IP. Raising these issues, Mr. Garg proposed a complete review of IP mechanism which should be made mandatory not only for all the PSUs and government departments but also the private sector for which a necessary law has to be implemented similar to the procurement bill that has been pending in parliament.

### Address by Mr. K. Subramaniam, Director, CVC



Mr. Subramaniam began by saying that he would address in the capacity of a public procurement resource person and that since he also manages knowledge management system for the International Association of anti corruption authorities which is the task force headed by the CVC, he gets to interact with other countries also that have implemented Integrity Pact and that he would like to share some of their experiences.

Pointing to the fact that India spends around 28% GDP in public procurement, European countries around 15 to 16% and the US around 13 %, he stated that corruption in public procurement is an issue not only for developing countries but also developed countries. Discussing the evolution of the mechanism of IP, Mr. Subramaniam stated that normally corruption is tackled through enforcement, punitive and preventive measures but such measures proved inadequate to tackle corruption in public procurement. This prompted studies around the world by anti corruption specialists to detect the main driver behind public corruption. The studies revealed two important drivers of corruption in public procurement which are described in terms of the prisoner's dilemma as part of the game theory. It states that each vendor believes that if he does not pay bribe somebody else will pay the bribe and get the contract. Though all contractors know that to have a situation where nobody pays bribe based on fair game is a win-win situation for everybody but as per game theory everybody knows that nobody plays for a win-win situation. Each player plays the game to maximize his gain and that the other is a loser. So, basically it is the distrust among the vendors which creates the problem. Transparency International based on this study came up with the concept of Integrity Pact.

He stated that Integrity Pact is nothing but an integrity 'pledge' between the players that we will not do any hanky panky and let's have a fair and level playing field. It is a purely voluntary instrument to create mutual trust and since it is a pledge and not legally enforceable, the only way to enforce it is through public monitoring by establishing an independent authority to monitor on behalf of public. It is like a social audit in which it is the public which monitors the pledge. Derived from the concept of "social witness", world over it is the NGOs and civil society who do the work of IEMs. So Independent External Monitors are in a way NGOs nominated on behalf of the civil society that ensure transparency in the public procurement on behalf of the public.

Mr. Subramaniam stated that IP is basically an evolving concept with different countries at different stages of evolution. India has evolved its own unique version. It is the only country where we have this unique mechanism of appointing one or two eminent persons as IEMs. There is one school of thought that states that since huge public money is involved so selection of an IEM must be a public matter. Mr. Garg shared how one of the biggest problems faced by countries like Columbia and Brazil has been about the selection of NGOs for monitoring IP.

The second issue raised by Mr. Subramaniam was the issue of funding since monitoring requires funds and this has been a major problem for NGOs. He shared some suggestions that are being put forward such as that half the money be paid by the suppliers and half by the organization.

Mr. Subramaniam emphasized the fact that IP is purely a voluntary concept based on mutual trust. The moment we try to issue a directive making it compulsory or make it a part of any act its meaning is lost. It is a matter of faith within the organization and cannot be enforced from outside. He substantiated by citing the Malaysian case where everyone adheres to the Pact in letter but not in spirit. Mr. Garg stated that something similar is happening in India now as making IP mandatory has meant that companies are now signing IP not out of their own conviction but as a compulsion and there is little understanding of the concept *per se*. Summarizing the point, Mr. Garg said IP is a voluntary mechanism and if a particular organization does not believe in it, it should not sign it.

Discussing the role of IEMs, Mr. Garg stated that role of IEMs is not that of an Ombudsman or a Complaint handling mechanism, rather his role is in the nature of a referee in a match or an election observer or an invigilator in an examination hall who sees to it that all the process is conducted in a free and fair manner. His job is not to investigate the complaints for which CVOs are there. Elaborating on how IEMs should ensure that the process of procurement is free and fair, IEMs should go through the procurement plan of the organization for the particular year and identify three-four high risk procurement contracts that should be monitored.

Further pointing out Mr. Garg stated that IP is a supply-side tool for tackling corruption though in India we have always focused on the demand side. Accordingly, IEMs should ensure meeting with suppliers. Mr. Garg stated that it is for the public and the stakeholders

to take action. The role of IEMs is similar to that of CAG who prepares Report which must be placed in the public domain. It is for the stakeholders, Parliament and MPs who are the pressure groups to say that something is wrong. According to Mr. Garg this is the strongest means of enforcement which reporting to CMDs would not serve. He further stated that TII should devise a mechanism whereby either the organization has a portal on Integrity Pact or TII itself should start an Integrity Pact portal where all reports including those of IEMs and procurements are put up. In case the management does not co-operate, they can be given ultimatum that IP would be withdrawn.

### Presentation by Mr. Ashutosh Kumar Mishra, ED, TII

Ashutosh Kumar Mishra, Executive Director, TII made a PowerPoint presentation on roles and responsibilities of IEMs.

He welcomed all chairpersons and guests and discussed the purpose of IEMs Meet. Elaborating on the present status of implementation of Integrity Pact in India he stated that the Ministry of Defense in its 2008 Procurement Policy has proposed to adopt IP in defense deals of Rs 100 crores and above and those of Rs 20 crores in its Enterprises and that 47 CPSUs, one state PSU and one Municipal Council are committed to adopt IP. Discussing the advantages of Integrity Pact, he said that it is feasible, collaborative, preventive and inclusive. He also said that it saves cost and time. He further talked about the role of Independent External Monitors and the monitoring related issues faced by IEMs.



### Focus Group Discussion with Independent External Monitors on Integrity Pact

The session was moderated by **Mr. Pankaj Agarwal**, Vice Chairman, TII.

**Mr. Vivek Mehrotra, IEM from ONGC**, raised the issue that the operation of the entire system of Integrity Pact is complaint-based which becomes active only when a complaint is received. In cases where no complaints are received the procurement process of that particular area is not monitored and the execution system is not effective. He made a suggestion regarding appointment of an in-house complaint officer as it is not possible to scrutinize thousands of sub-clauses of IP by a single person. He also said that there is a need for third party independent evaluation of implementation of IP in India in a holistic manner as we have been talking of individual experiences which are in the nature of anecdotes rather than based on some kind of independent evaluation of the system. He said that one of the clauses of IP which is not adequately followed is about similar IP between the principal contractor and sub-contractor which is not taking place. He also said that CVC should revise the Standard Operating Procedures (SOPs) and it could be according to the

size of company or size of the procurement. He further stated that the process of appointment of IEMs is not up to the mark.



**Mr. R.C. Agarwal, IEM form Oil India Limited** said that Oil India adopted the Integrity Pact in early 2010. Initially the cutoff limit was one crore and later on it was reduced to fifty lakhs on their suggestions and that enabled them to cover 90% of the procurement process. He further stated that they did not face any problem in obtaining any information or in fixing up the meetings with the CMDs or with the directors or any other review meetings. He also shared how they started the practice of information sharing on quarterly basis. Providing an estimate, he said that by and enlarge they looked into around 40 complaints referred to them and in about 25% cases they made their own recommendations against the decisions taken with the Oil India Authorities. Appreciating the top management of Oil India he said that the management was very accommodative and accepted all of their recommendations, including those that were against them. He mentioned how Integrity Pact had also enhanced the degree of trust among vendors as none of them went for arbitration or a court case except one in which the party appealed to the Supreme Court and ended up spending 4.5 crore. The Oil India spent about 50 lakhs in the proceedings and the matter dragged on for about 1.5 years.

Mr. Agarwal said that everything boils down to the attitude of the top management and in the case of Oil India the attitude of the top management was very positive as they were committed to the effective implementation of Integrity Pact. Substantiating, he said that their suggestion that in case of limited tenders even those parties that were not in the list but wanted to bid be allowed was also accepted. The vendor meetings which were infrequent earlier have also become regular with they as IEMs invited to such meetings.

Discussing the problem areas, he pointed out the problem of inadequate competition. Drawing from his own experience in Oil India, he informed that in about 25-30% cases less than 3 bids and in about 10 % cases only 1 bidder was in the fray either from the beginning or after technical scrutiny. So one does not know that the company is getting the best price or a fare value of the contract. Secondly, Mr. Agarwal talked about the issue of delay in

finalizing of tenders which in some cases takes about more than one year. An implication of this delay is that the company does not get fare value because they are at a loss with the prices quoted with this delay and are not going to pay interest from their own pockets. Lastly, he raised the issue of the need for sensitizing the tender processing officers with the problem of cartelization.

**Mr. J.K. Khanna, IEM from Northern Coalfields Limited** stated that the concept of Integrity Pact (IP) and its monitoring by the Independent External Monitors (IEMs) was intended to be an effective anti-corruption tool but even as a façade it has proved to be a pathetic exercise being plagued with a self-defeating inertia. He stated that conceptually an IEM is the core of the IP but in actuality he has no power or authority nor accountability. His findings/ report on any enquiry on a bidder's complaint or on reference by the CMD can be spurned/ dumped by that very CMD to whom alone the IEM has to submit it. Commenting on IP he said that the reality is that the concept and the procedures are half baked and haphazard. Consequently, the IEM has turned out to be just a paper tiger and a toothless appendix in the anti-corruption armoury. Mr. Khanna also shared a paper on how to make IEMs more effective.

**Mr. V.K. Gupta, IEM from GAIL and NDMC,** stated that in our country where corruption is rampant and we are down in corruption perception index and up as bribe takers – no anti corruption tool will be effective in a voluntary mode. In the absence of self-discipline and self-enforcement which we lack, option of voluntary tools will not be successful. He further stated that after the issue of directions by Ministry of Finance, the adoption of IP has been made mandatory and thus it is not an issue open for any debate now. Taking forward the discussion, he said various issues expressed by IEMs can easily be addressed simply by revisiting the SOP issued by CVC on the basis of vast experience now gained by IEMs and the organizations. At present different formats and models are used by various organizations for adoption of IP which need to be standardized.

He also said that a group of three IEMs (with sufficient exposure of IP), two senior level representatives from the IP compliant organizations, and one representative from TII be constituted to draft a comprehensive SOP (which can be submitted to CVC with a request to issue from their office) including the standard agreement of IP which shall be made part of contract. The SOP, Mr. Gupta stated should contain clear provisions.

During the discussion he also talked about selection of IEMs. He said that now that IP is mandatory to be adopted by PSUs and Government departments, the bar that an IEM can be appointed for not more than two organizations need to be revised. For bigger organizations dealing with large value procurements at least one IEM should be a technical person, in case of non availability, IEMs should have the authority to co-opt a technical person of repute on a case –to- case basis.

**Mr. P.N. Parashar, IEM, from Coal India Limited** shared his experience as an IEM and said that the IEMs are not involved in all stages to properly examine and monitor the

transactions. Rather IEMs are invited only with a view to accord formal approval of the orders of the board or the transactions carried out by the PSU. He also stated that the IEMs are not provided proper opportunity and full material, perhaps, deliberately. The information is very often provided at the end and relevant material not shared before the meetings. He pointed out that often in the meetings a crisis like situation is presented and it is suggested that if the progress is held up on account of any further enquiry then there shall be no supply or short supply and the production shall be held up. Sometimes items for discussion in the agenda are included a day before the meeting or at the time of meeting so that IEM does not get full opportunity to call for records and examine the matter. He further stated that the notes sent by the IEM are not circulated in the meetings nor are placed on the record. He also shared few suggestions to make the integrity pact more effective. He said that there should be regular meetings and sharing of knowledge and experiences amongst various IEMs working with different PSUs including relevant guidelines and circulars of CVC. He also discussed that the IEMs should be associated right from the stage of inviting tenders up to the stage of execution of the contracts and should be provided full opportunity to watch as to whether PSU and the contractor are following the integrity pact as signed by them. He concluded by saying that general guidelines for IEMs should be prepared by CVC in coordination with Transparency International India.

**Mr. Suresh Kumar, IEM from RITES Limited** said that in the organization there has been regular practice of sending any Notice Inviting Tender (NIT) to IEM and that they have also been monitoring that it becomes a complaint based working by the IEM. He stated that if we are to make IEM an effective monitoring authority, efforts should be made to have certain guidelines pertaining to the role, procedure for appointment of IEMs in the form of a manual which clearly states the role and function of IEMs at different stages of the procurement process. This will according to Mr. Kumar systematize the working of the system and will also help the organization as their own expectations from IEMs would also become clear. He also raised the issues that arise post-the award of the contract when in some cases the contractor approaches the IEM regarding any confusion in interpretation of any of the clauses at a stage when he has already completed the work. In such cases the application is forwarded both to the arbitrator appointed by the organization and the contractor wants the opinion of the IEM, in such cases the role of IEMs is not clear which needs deliberation in a more intensive manner.

**Mr. R.C. Panda, IEM from HPCL and NMDC** sharing his views stated that the entire IP and Standard Operating Procedure (SOP) needs to be revisited as there are contradictory guidelines issued by Department of Public Enterprises (DPE), CVC, finance ministry that should be brought together. He also said that the dependency of IEMs on the organization needs to be reduced. According to Mr. Panda CVC could issue certain guidelines to PSUs to convene at least quarterly meetings. He also stated that as compared to the total number of central PSUs, only around 47 have signed the IP and even after excluding around 50 loss making PSUs about 200 PSUs are yet to sign the Integrity Pact that needs to be taken up before the concerned ministries and CPSUs by the CVC.

**Mr. H.S. Rajpal, IEM from Indian Oil Corporation Limited** raised the issue of transgression and argued that we have been talking about transgression over a period of last 2-3 years in any part of the world. To actually implement and oversee transgression at such a scale requires lots of effort. He made a suggestion to TII that there should be some forum or some kind of web on which the names of the parties who have transgressed should be available so that such parties are taken care of at the Notice Inviting Tender (NIT) stage itself. He further stated that the transgression policy needs to be uniform because otherwise it will lead to a lot of discretions and arbitrariness. He stated that some PSUs have a holiday listing policy or a blacklisting policy on the lines of which if the transgression policy is also circulated, it would be good for the people.

In the end, **Moderator Mr. Pankaj Agarwal, Vice Chairman, TII** concluded the Focus Group Discussion and said that the suggestions and views that have come up in the discussion would be further discussed in a forum where there could be exchange of views, suggestions and feedback of the IEMs where CVC and other international experts could also be invited to resolve the issues that have been discussed.

#### **Summing up and Vote of Thanks**

Shri Ashutosh Kumar Mishra, Executive Director, TII summed up the event conveying vote of thanks to all the stakeholders present at the meeting.

\*\*\*\*\*