

Public Procurement of Goods

Legal & Procedural
Framework

Legal & procedural framework

- Constitution of India
- Indian Contract Act
- Sale of Goods Act
- Indian Arbitration & Conciliation Act
- Procurement Rules contained in GFR, if applicable
- Procurement Guidelines formulated by CVC
- Procurement Guidelines of the Department/PSU concerned

GFR 2017

An Overview

GFR Journey

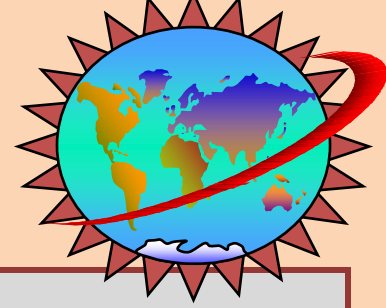
• GFR 1947

• GFR 1963

• GFR 2005

• GFR 2017

Basic Learning Rationale



Personal purchase

v/s

Govt Purchase

Working under GoI norms & policy
framework

Facts of Process

Financer determines the Process – Gol

- Prescription, policy & rules of Gol
- Lawful process
- Power – Delegation of authority
- Open competition – Opportunity to all
- Need based purchase – No speculation

Contract is the basis for procurement

Needs time, knowledge and Planning

Why GFR

- Rules and orders of Government of India while dealing with matters involving public finances
- Principles of accountability
- Procedures of financial discipline and administrative due diligence
- Manage business in a financially prudent manner without compromising flexibility to deal with varied situations
- Promoting simplicity and transparency in the government financial system and procedures

Regulatory Principles

- Public Procurements of Govt of India are governed by the General Financial Rules 2017 (GFR 2017)
- While dealing with matters involving public finances, these have to be followed
- Issued by Dept of Expenditure, Ministry of Finance, Government of India

GFR for Procurement of Goods

Chapter 2 General System of Financial Management

Chapter 6 Procurement of Goods and Services

✓ I. Procurement of Goods

II. Procurement of Services

Chapter 7 Inventory Management

Chapter 8 Contract Management

Appendix 11 Formula for PVC

Form GFR 10 Report of Surplus, Obsolete and Unserviceable Stores for Disposal

Form GFR 11 Sale Account

GFR 2017: Rule 21 - Standards of financial propriety

In summary

For expenditure from public moneys

- ✓ To Ensure that financial rules and regulations are observed
- ✓ Apply ordinary prudence as for own money
- ✓ Not more than the occasion demands
- ✓ No self sanction for own advantage
- ✓ Not for benefit of particular person/section unless:
 - Claim can be enforced in a Court of Law
 - For recognized policy or custom

GFR 2017: Rule 21 - Standards of financial propriety

Every officer incurring or authorizing **expenditure** from public moneys should be **guided by high standards of financial propriety**. Every officer should also enforce financial order and strict economy and **see that all relevant financial rules and regulations are observed**, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following :-

- (i) Every officer is expected to **exercise the same vigilance** in respect of expenditure incurred from public moneys as a **person of ordinary prudence** would exercise in respect of expenditure of his own money.
- (ii) The **expenditure** should not be prima facie more than the occasion demands.
- (iii) No authority should exercise its powers of **sanctioning** expenditure to pass an order which will be **directly or indirectly to its own advantage**.
- (iv) Expenditure from public moneys should not be incurred for the **benefit of a particular person or a section of the people, unless -**
 - (a) a claim for the amount could be **enforced in a Court of Law**, or
 - (b) the expenditure is in pursuance of a **recognized policy or custom**.

Rule 144 Fundamental principles of public buying

Every authority delegated with powers has responsibility and accountability to

- Bring efficiency, economy and transparency
- Fair and equitable treatment of suppliers
- Promotion of competition in public procurement
 - Right & unbiased **Description** of goods
 - Right **Quantity**, Right **Procedure**,
 - Right **Source** (capable & reliable),
 - Right **Price**

GFR-Procurement procedure- Quality

- The description of the subject matter of procurement to the extent practicable should be objective, functional, **generic** and measurable and specify technical, qualitative and performance characteristics
- It should **not** indicate a requirement for a particular trade-mark, trade-name or brand .
Rule144(i)

GFR-Procurement procedure- Quality

- The specifications (in terms of quality, type etc.) should be formulated keeping in view the specific **needs**.
- The specifications should meet the basic needs without including **superfluous** and non-essential features, which may result in unwarranted expenditure. Rule144(ii)

GFR-Procurement procedure- Quantity

- Care should also be taken to avoid purchasing quantities in **excess of requirement to avoid Inventory Carrying Costs (ICC)**. Rule 144(iv)

GFR-Proc procedure-Tendering & selecting offer

- Offers should be invited following a fair, transparent and reasonable procedure. Rule 144(v)
- The procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects. Rule 144(vi)

GFR-Procurement procedure - Price

- The procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required. Rule 144(vii)

GFR-Proc procedure -Reasoned Decision

- At each stage of procurement the procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision. Rule 144(viii)

Description of Goods

- Be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics
- not indicate a requirement for a particular trade mark, trade name or brand
- specifications & quantity be
 - ✓ clearly spelt out for specific needs,
 - ✓ meet the basic needs without superfluous and non-essential features, for minimum expenditure
 - ✓ technical specifications shall be based on national standards and in their absence, on the relevant international standards
 - ✓ avoid purchasing excess quantities than required to avoid inventory carrying costs

GFR-Procurement procedure- Quality

- The description of the subject matter of procurement to the extent practicable should be objective, functional, **generic** and measurable and specify technical, qualitative and performance characteristics
- It should **not** indicate a requirement for a particular trade-mark, trade-name or brand .
Rule144(i)

GFR-Procurement procedure- Quality

- The specifications (in terms of quality, type etc.) should be formulated keeping in view the specific **needs**.
- The specifications should meet the basic needs without including **superfluous** and non-essential features, which may result in unwarranted expenditure. Rule144(ii)

GFR-Procurement procedure- Quantity

- Care should also be taken to avoid purchasing quantities in **excess of requirement to avoid Inventory Carrying Costs (ICC)**. Rule 144(iv)

GFR-Proc procedure-Tendering & selecting offer

- Offers should be invited following a fair, transparent and reasonable procedure. Rule 144(v)
- The procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects. Rule 144(vi)

GFR-Procurement procedure - Price

- The procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required. Rule 144(vii)

GFR-Proc procedure -Reasoned Decision

- At each stage of procurement the procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision. Rule 144(viii)

Rule 149 Government e-Market place (GeM).

- Agency authorized by the Government will host an online Government e-Marketplace (GeM) for common use Goods and Services
- Procurement on GeM **mandatory for Goods or Services available on GeM**
 - Credentials of suppliers on GeM shall be certified by GeM
 - Procuring authorities will certify the reasonability of rates using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc
 - The GeM portal shall be utilized for direct on-line purchases as under, meeting requisite quality, specification and delivery requirement
- ✓ Up to Rs.25,000/- through any of the available suppliers on GeM
- ✓ Rs.25,000/- to Rs.5 Lakh through Seller having lowest price, of at least three different manufacturers. The tools for online bidding and online reverse auction **can be used**
- ✓ Above Rs.5 Lakh through supplier having lowest price after **mandatorily** obtaining bids, using online bidding or reverse auction tools
- ✓ **Demand not to be split** to avoid procurement through L-1 Buying / bidding / reverse auction on GeM
- ✓ The depts shall **project their Annual Procurement Plan** of goods and services on GeM portal within 30 days of Budget approval

Other GFR 2017 Rules

- Rule 151 **Debarment from bidding** **after giving reasonable opportunity**
- Rule 153 **Reserved Items and other Purchase/ Price Preference Policy**
 - all items of hand spun and hand-woven textiles (khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC)
 - all items of handloom textiles exclusive purchase from KVIC and/or the notified handloom units of Association of Corporations and Apex Societies of Handlooms (ACASH)
 - Ministry of Micro, Small and Medium Enterprises (MSME) procurement policy
 - preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services, Make in India
- Rule 154 **Purchase of goods without quotation**
 - Purchase upto Rs. 25,000 without inviting quotations on a certificate by CA “I,, am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price.”
- Rule 155 **Purchase of goods by Purchase Committee**
 - Purchase above Rs. 25,000 and upto Rs.2,50,000/- by Local Purchase Committee of three members as decided by the HOD, “Certified that we, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/ Department concerned.

Other GFR 2017 Rules

- **Rule 158 Purchase of goods by obtaining bids**
 - following the standard method of obtaining bids in:
 - (i) Advertised Tender Enquiry
 - (ii) Limited Tender Enquiry
 - (iii) Two-Stage Bidding
 - (iv) Single Tender Enquiry
 - (v) Electronic Reverse Auctions
- **Rule 159 E-Publishing**
 - mandatory to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP)
 - applies to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre Qualification/ Registration or any other notice
- **Rule 160 E-Procurement**
 - mandatory to receive all bids through e-procurement
 - may use e-procurement solution developed by NIC
- **Rule 161 Advertised Tender Enquiry**
 - for procurement value of Rs. 25 lakhs and above
 - to promote wider participation and ease of bidding, no cost of tender document for the tender documents downloaded by the bidders
 - minimum time for submission of bids should be three weeks for Domestic tenders and four weeks where deptt contemplates obtaining bids from abroad

Other GFR 2017 Rules

- **Rule 162 Limited Tender Enquiry**
 - For purchase value up to Rs 25 Lakh. Copies of the bidding document should be sent directly by speed post/registered post/courier/ email to firms borne on the list of registered suppliers
 - The number of supplier firms in LT Enquiry should be more than three. Efforts be made to identify higher number of approved suppliers to obtain more responsive bids on competitive basis.
 - The unsolicited bids should not be accepted
 - Spl LT where value > Rs 25 Lakh when
 - the demand is urgent & certified that additional expenditure involved by not procuring through advertised tender enquiry is justified
 - Sources of supply are known and possibility of fresh sources is remote
- **Rule 163 Two bid system (simultaneous receipt of separate technical and financial bids)**
- **Rule 164 Two-Stage Bidding**
- **Rule 166 Single Tender Enquiry**
- **Rule 167 Electronic Reverse Auction**

Other GFR 2017 Rules

- Rule 168 Contents of Bidding Document
 - Chapter – 1: Instructions to Bidders
 - Chapter – 2: Conditions of Contract
 - Chapter – 3: Schedule of Requirements
 - Chapter – 4: Specifications and allied Technical Details
 - Chapter – 5: Price Schedule (to be utilised by the bidders for quoting their prices)
 - Chapter – 6: Contract Form
 - Chapter – 7: Other Standard Forms, if any, to be utilized by the purchaser and the bidders
- Rule 169 Maintenance Contract
- Rule 170 Bid Security
- Rule 171 Performance Security
- Rule 172 (1) Advance payment to supplier
- Rule 172 (2) Part payment to suppliers

Other GFR 2017 Rules

- **Rule 173 Transparency, competition, fairness and elimination of arbitrariness in the procurement process**
 - to secure best value for money
 - bidding document - self-contained and comprehensive without any ambiguities
 - All essential information, for responsive bid, should be clearly spelt out in simple language
 - The condition of **prior turnover and prior experience** may be **relaxed for Startups** (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document
 - Bidding Document must have
 - (a) Description and Specifications of goods including the nature, quantity, time and place or places of delivery
 - (b) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc or limitation for participation of the bidders, if any
 - (c) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc which may required to be met by the successful bidder
 - (d) the procedure as well as date, time and place for sending the bids
 - (e) date, time and place of opening of the bid. (e) Criteria for evaluation of bids
 - (f) special terms affecting performance, if any
 - (g) Essential terms of the procurement contract
- Suitable provision for settlement of disputes
- The bidding document should indicate that the contract will be under Indian Laws
- The specifications of the required goods should be clearly stated without any ambiguity
- to attract sufficient number of bidders, the specification should be broad based
- **Pre-bid conference:** In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery etc. projected in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of bid opening date. The records of such conference shall be intimated to all bidders and, shall also be exhibited on the website(s) where tender was published

Other GFR 2017 Rules

- Rule 174

Efficiency, Economy and Accountability in
Public Procurement System

- Rule 176

Buy-Back Offer

❖ CVC Guidelines

Meaning of Vigilance Angle

- Demanding / accepting gratification other than legal remuneration in respect of an official act
- Obtaining valuable things without consideration from a person with whom has or likely to have official dealings
- Possession of assets disproportionate to known sources of income
- Obtaining any valuable things by corrupt or illegal means by abusing his official position

❖ CVC Guidelines

- Applicable to all Central entities
- Issue of guidelines by CVC either Sue Moto or on review / examination of various complaints
- Guidelines focuses on integrity of public servants

❖ Causes of Corruption

Santhanam Committee identified four major causes of corruption:

- Administrative delays
- Personal discretion in the exercise of power
- Cumbersome procedure
- Lack of knowledge with regard to rules & guidelines

CVC guidelines- Mode of Proc

- In order to generate enough competition and to avoid favoritism, issue of advertised/global tender inquiries should be resorted to and published in journals and national newspapers giving adequate time to the prospective bidders.
- As per latest guidelines publishing on Department's website and CPPP is mandatory.

CVC guidelines- Tender Enquiry

- Important clauses relating to earnest money, delivery schedule, payment terms, performance bank guarantee, warrantee, pre-despatch inspection, arbitration, liquidated damages and penalty for the delayed supplies to be incorporated in the T/E .

CVC guidelines- Changes in tender specs etc

- In order to give equal opportunity to all bidders and to maintain sanctity of tendering system, it is of paramount importance that **any change** in tender terms & conditions, specifications and tender opening date etc. be **notified to all the bidders, sufficiently in advance** of the revised tender opening date.

CVC guidelines- Reasonableness of Price

- Purchase organisations must establish the reasonableness of prices on the basis of estimated rates, prevailing market rates, last purchase prices, economic indices of the raw material / labour, other input costs and intrinsic value etc., before award of the contract.

CVC guidelines- Awarding of contract

- Once it has been established that the offers meet the laid down specifications, the question of 'grading' as well as any 'pick and choose' should not arise.
- The contract needs to be **awarded to the lowest bidder meeting the laid down specifications.**

CVC guidelines -Drafting of contract

- Specific delivery period for supply as per the terms of delivery such as for station of despatch / destination and for completion of installation with the necessary provision for liquidated damages / penalty clause in the event of delay in supplies/ installation needs to be incorporated in the contract.

CVC guidelines- Contract Mgmt

- After conclusion of the contract, any **relaxation in the contract terms / specifications** should be **severely discouraged**. However, in exceptional cases where the modifications/amendments are considered to be absolutely essential, the same should be allowed after taking into account the **financial implications** for the same.

CVC guidelines- Contract Mgmt

- It is essential to accord priority to the post contract follow up. The delivery period should be extended on bonafide request and not in a routine and casual manner.
- After expiry of delivery period, the consignees should be refrained from exchanging correspondence with the supplier. In case of **delay in supplies** by the supplier, the **liquidated damages** to the extent possible need to be recovered.

Negotiation- CVC

- As post tender negotiations are the main source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiations with L-1 (lowest acceptable tenderer).
- The instructions/ guidelines circulated by cvc on post tender negotiations only with L-1 need to be strictly followed.
- **Subsequently L-1 has been defined as Lowest bidder found suitable for bulk quantity order**

❖ CVC Guidelines on Procurement / Contract Management

Negotiation with L-1

- a. No post tender negotiation normally except in certain exceptional circumstances viz proprietary items, items with limited source of supply,
- b. Counter offer to L-1 amounts to negotiation
- c. Counter offer to L-2, L-3 etc at the rates accepted by L-1 in case of splitting of quantities as pre disclosed in the tender not to be treated as negotiation

❖ CVC Guidelines on Procurement / Contract Management

Award of Contract on nomination basis

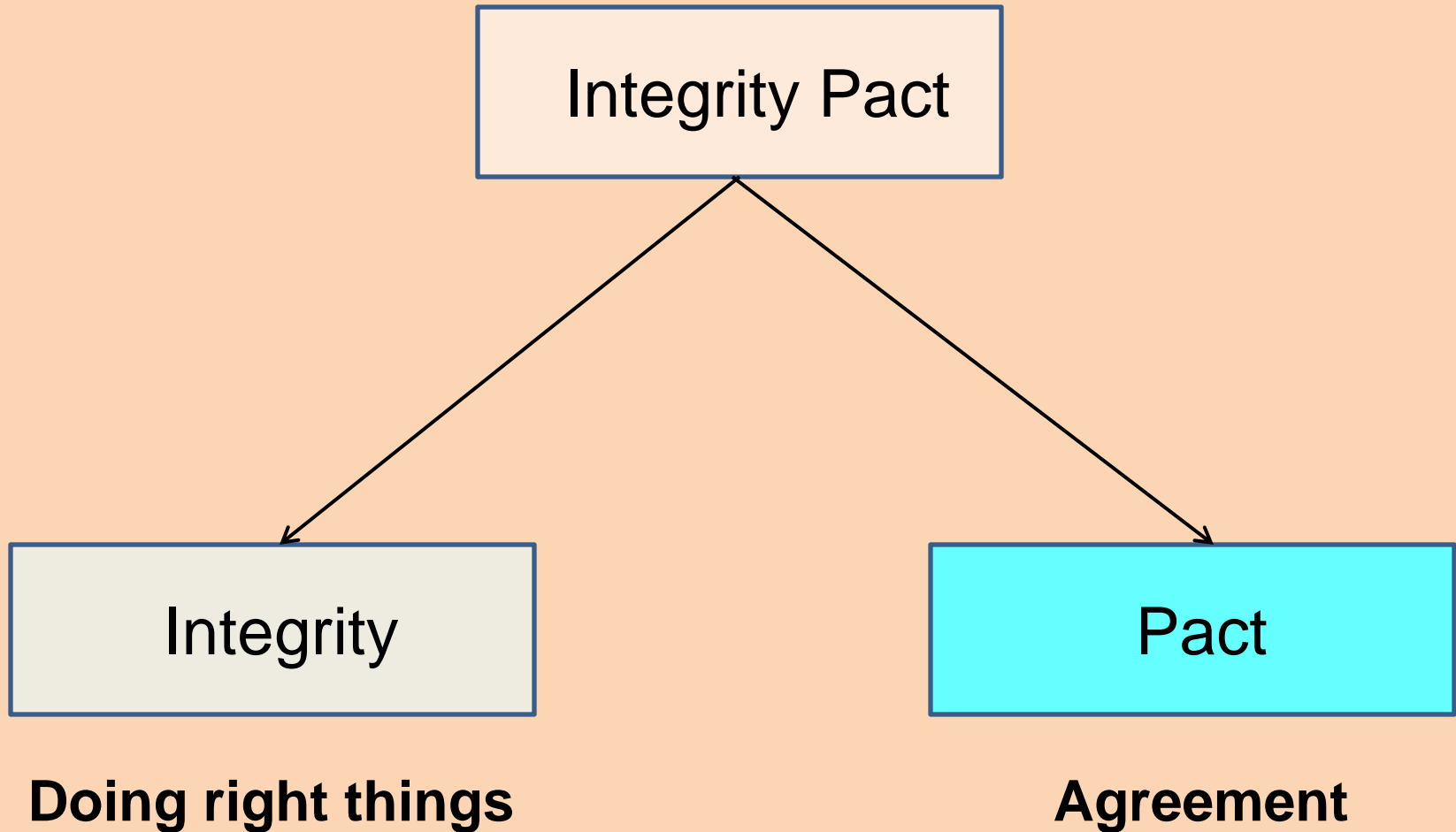
- a. Supreme Court of India in Nagar Nigam Meerut versus Faheem Meat Export Private Limited decided that contract can be awarded on **nomination basis in the following circumstances only**.
 - i. During natural calamities and emergency declared by Government where the procurement possible from a single source only
 - ii. Where the supplier has exclusive rights in respect of goods & services and no reasonable alternative exist.
 - iii. When an auction held several times but no bidders came forward or bids offered were very low
- b. All works awarded on nomination basis to be brought to the notice of board of PSUs for information
- c. Posting of details on award of tenders on websites

Contd...

❖ **CVC Guidelines on Procurement / Contract Management**

**Voluntary adoption of integrity pact
in major Government Procurement**

What is integrity Pact?



Preventive vigilance- IP

- IP is an agreement entered into by the Principal and the Vendor for each contract
- Independent External Monitor (IEM) is appointed for monitoring its implementation



❖ CVC Guidelines on Procurement/ Contract Management

Mobilization advance

- a. To be backed by bank guarantee
- b. Not to be paid in less than two installments
- c. Interest bearing as per prevailing market rates

❖ **CVC Guidelines on Procurement/ Contract Management**

Short comings in bid documents

Pre Qualification, evaluation criteria be stipulated in tender document itself

❖ **CVC Guidelines on Procurement/ Contract Management**

Undertaking by members of tender committee

Committee members are required to disclose their personal interests in the tender

❖ **CVC Guidelines on Procurement/ Contract Management**

Time bound processing of Procurement

Fixation of period for validity of the offers with utmost care & extension of validity be rare and in exceptional circumstances

❖ Preventive Vigilance

Preventive Vigilance based on theme

‘Prevention is better than cure’

Major steps in preventive vigilance

- Analysis of rules & regulations & other administrative orders of the organization
- Identifying procedures & systems which need to be simplified
- Identification of sensitive areas
- Organizing vigilance awareness program
- Rotation of officials working in sensitive areas
- Surprise checks & inspections

❖ Preventive Vigilance

Case Study

Shortcoming observed during preventive inspection of a PSU (in the business of handling of containers through handling contractor)

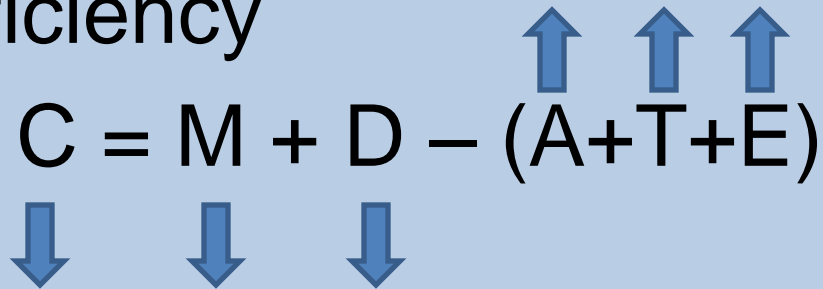
- No. of trailers & handling equipment in numbers less than the contract provides
- Deployed trailers/equipment not meeting vintage year criteria
- Original registration certificate of the vehicles not available
- Breakdown register for the trailers/equipment not maintained in proper format
- Failure to issue job orders
- Permits not issued through computerized system (gate in & gate out passes)
- Equipment utilized for movement in another contract
- Contract on adhoc basis

Corrective Action

Detailed guidelines issued on these inspection points of vigilance

To Minimize Corruption

- Reduce Monopoly & Discretionary powers
- Increase Accountability, Transparency, Efficiency

$$C = M + D - (A + T + E)$$


- The breakeven for corruption needs to be made higher by raising Risk levels for those involved – Ex CVC, Sh Vithal

Preventive vigilance

-Enhance Transparency

- Publicize charter of duties
- Make procedures public
- Provide guidance to the public
- Make senior officers accessible

Preventive vigilance

-Enforce Accountability

- Make clear demarcation of areas of work
- Make delegation of power clear
- Establish an overarching body
- Hold authority concerned accountable

Thank You