

# **DETAILED RESPONSE OF THE MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA TO THE DIR OF INDIA HEALTH SECTOR PROJECTS**

## **Government of India's response to DIR**

### **INTRODUCTION**

India has long association with the World Bank and has successfully implemented many Bank assisted programs. Our partnership in the health sector with the Bank received a significant boost in 1990s with the Bank funding 22 new health sector projects worth US \$ 608 billion. Post 2001, Bank approved 10 more health sector projects worth US \$ 1.5 billion. These projects covered several National Disease Control Programs including Malaria, Tuberculosis, HIV AIDS, Leprosy, Blindness and State Health System Development projects. Most of these projects have been implemented to the satisfaction of the donors and the international community. Some of the notable achievements are:

- The prevalence of Leprosy was brought down from 1983-84 was 44.7 per 10,000 population to 0.72 per 10,000 population in March 2007.  
The Blindness project brought the services of high quality intra ocular lens treatment to the common man. Intra ocular lens implant treatment increased from 10% to 65%.
- National Tuberculosis Control Programme has been one of the most successful programmes.
- HIV AIDS – The World Bank National AIDS Control Programme II Project achieved its primary goal of containing the epidemic well below one percent.
- Total malaria cases declined from 1.19 million in 1997 to 0.65m in 2004 in project states. *P. falciparum* cases declined from 0.72m cases to 0.41 m. Reported deaths due to malaria declined from 539 to 226.
- State Health Sector projects addressed critical gaps in health care delivery system (infrastructure, diagnostic facilities etc.)

### **Background & Findings of DIR**

The Bank shared the RCH-I investigation report by INT with the Govt of India in 2006. As part of the understanding on going forward, it was agreed to conduct a DIR of five health sector projects.

The findings of the DIR can be broadly categorized as follows:

- i) **Procurement deficiencies** e.g. collusion, bid rigging, bribery and manipulation of records.
- ii) **Implementation deficiencies** e.g. deficient civil work certified as complete, broken/damaged equipment certified as compliant, under-delivery of services.
- iii) **Oversight deficiencies e.g. inadequate financial, audit and internal controls** both by GOI and Bank

### **Actions already undertaken by Government of India prior to DIR**

1. Most of the issues noted in the DIR had already engaged the attention of the Ministry. Efforts have been made to address these in the design of successor projects.

***DIR has taken no cognizance of the remedial measures already taken by the Government.***

2. The launch of the National Rural Health Mission (NRHM) in April 2005 was a significant step of the Government towards a holistic delivery of healthcare services in the country. NRHM has initiated a series of architectural corrections in the public health delivery system. Some of these are:

- In-built institutional and financial monitoring mechanism, e.g., Programme Management Units (PMUs) at State/District/Sub-district levels consisting of management, financial and IT experts.
- Community ownership, accountability and oversight through Village Health and Sanitation Committees and Patients Welfare Societies at Sub-district and District Hospital levels consisting of representatives of Panchayati Raj Institutions, civil society and Government health functionaries.
- Emphasis on 'service guarantees' and not merely on the creation of buildings and purchase of equipments.
- Capacity Building of States for decentralised procurement.
- Electronic transfer of funds from Government of India to States and States to districts and E-Banking for real time financial reporting and monitoring.

***The DIR does not acknowledge this paradigm shift in the health sector.***

3. Government of India has already taken cognizance of the irregularities pointed out in the RCH-I Investigation Report and has already initiated several criminal, penal and disciplinary actions as follows:

- (i) Suspended business with two firms viz. M/s. Nestor Pharmaceuticals and M/s. Pure Pharma in July, 2005 on charges of reported collusion.
- (ii) On reference from Government CBI registered a case against M/s. Pure Pharma and M/s. Nestor Pharmaceuticals.
- (iii) Two officers from the Procurement Support Agencies were suspended in 2006. Departmental proceedings initiated.

***DIR does not note these actions already taken by the Government.***

4. To improve procurement process following actions have been taken:

- (i) UNOPS given procurement responsibility for World Bank projects.
- (ii) Set up an Empowered Procurement Wing (EPW) to provide oversight and strengthened Centre and State procurement capacities.
- (iii) Introduced measures to improve the competition, transparency and quality through the Governance and Accountability Action Plan (GAAP) agreed for all health projects by the Bank in 2006.
- (iv) Created the Financial Management Group (FMG) at the Health Ministry, supported finance staff at State and District levels, developed detailed project specific financial management manuals.
- (v) Pre-award validation/certification of WHO GMP made mandatory in all cases.

***None of these actions have been noted by the DIR.***

**Actions taken after receipt of DIR report:**

- i) To address the systemic deficiencies pointed out in DIR, a Joint Action Plan has been finalised after intensive discussions with the Bank officials.
- ii) Three new cases pertaining to Chhattisgarh and Karnataka referred to CBI for further investigation. One of these was identified through an analysis of the audit report.
- iii) The Government of Orissa has filed a criminal case, initiated departmental proceedings and ordered a full-fledged vigilance inquiry into the all deficiencies pointed in the DIR report

Government of India is committed to eliminate fraud and corruption. It fully co-operated with the DIR team. However, the exercise turned out to be unilateral. Government was never consulted either during the exercise or before finalization of the report.

The DIR was received in the Government in a positive spirit in January 2008. The Government declared its intention to undertake appropriate corrective measures to beef up procurement and other implementation systems on one hand, and to take exemplary punitive action against wrongdoers on the other.

Government has since examined the DIR in detail. Several of the contracts reviewed in the DIR were scrutinized by the Government. It transpires that many of the analyses and interpretations of the DIR are not borne out by facts. Detailed responses of the different projects which have been furnished would substantiate our observations. Some of our key observations are noted below:

- a) **Tuberculosis(TB) Program (RNTCP-I):** The DIR itself concludes that they did not find any indicator in respect of procurement of pharmaceuticals or equipment, their distribution or supply or quality, and maintenance and use at the field levels. It also accepts that the two pharmaceutical companies it examined in particular while indulging in collusive practices were denied contracts. But instead of giving credit to the Government for ensuring this it concludes that had those companies had not been accidentally deregistered they would have cornered all the contracts thereby creating an impression of large scale corruption, and in procurement of drug,. Thereby affecting the credibility of a program recognized globally for its good performance. Further, the DIR report mentions savings in the project because of substantial over estimation in the original cost estimates and decline in the prices of important items including drugs and microscopes. However, this decline has not been analyzed. As per WHO report 2007, the cost of first line TB drugs is US\$ 16 per patient treated in India, as against the median cost for other high burden countries – US \$ 26 per patient.
- b) **AIDS:** There is a serious misinterpretation of laboratory data, partly because DIR had taken as its principal investigator a person who was not fully versed with the laboratory practices and SOPs being followed in India leading to question of the test results through kits supplied under the programme. This has caused incalculable damage to the credibility of HIV testing in India. Publicizing generic conclusions regarding selection of NGOs on the basis of a small sample size and without taking into account actions being taken by NACO have similarly affected the whole partnership process.
- c) Regarding procurement of synthetic pyrethroids under the malaria programme the DIR has failed to take a holistic approach by ignoring several years of domestic procurements and come to completely wrong conclusions. DIR did not detect collusion. RITES had already done so in 2001. The Dept of INT was also informed but there was no response. Actions taken by the Government increased competition by facilitating entry of small Indian firms which also reduced prices, which as often happened in cases of Indian manufacturers led to sharp declines. This process started in 2001 and was completed by 2004. There was no sudden vanishing of collusion. Further, unsubstantiated allegations have been made against the CIB and senior officers on the basis of interviews of interested parties and anonymous letters, which are completely unacceptable and even libelous.
- d) Several conclusions reached related to Food and Capacity Building contracts are factually incorrect. DIR has also questioned a Steering Committee in the Ministry being set up to consider recommendations of the BER. But this was done as part of an agreed financial structure when the Project started

There are many such examples where the facts, or the interpretations, or the conclusions are either wrong or misleading. As already stated, discussions and clarifications would have clarified all these issues leaving only distilled cases for further action and clearly identifying remedial issues.

#### **General comments on Bank's Procurement procedures and conditions:**

All procurement of goods, equipment and services have been as per existing World Bank procurement procedures. At many times, rigid Bank criteria have limited competition while DIR has noted this to be an indicator of fraud and corruption. Project design weaknesses such as release of 90% of payments on dispatch/delivery of equipment have led to sub-standard delivery of equipment as adequate safeguards against improper installation were not structured into the project design.

The DIR has dealt at length with the deficiencies and indicators of fraud and corruption in decentralized procurements even though they constitute less than 5% of the value of total contracts analysed by them.

**Conclusion :**

The delivery of health services is organic in nature and it is extremely necessary to maintain the credibility of these health programmes. By erroneously creating an impression that the health sector delivery system in India is beset with fraud and corruption the DIR has done incalculable damage to the credibility of successful disease control programmes. This could have long term adverse impact on the implementation of these programmes. This damage would be far greater than what was sought to be fixed by the DIR.

**EXECUTIVE SUMMARY**

**TB (RNTCP-I)**

DIR in its report for TCP has observed that the implementation of pharmaceutical and equipment purchased *under the TCP generally demonstrated proper supply, good quality and few deficiencies in the projects supply and distribution chain.* DIR also noted that they did not identify any indicators that TCP suppliers provided inadequate or poor quality pharmaceuticals, as all the drug samples collected by DIR team and tested in Netherlands in an independent laboratory were found to comply with the applicable contractual specifications. DIR did not discover indicators that prices were inflated, nor did the DIR discover indicators of fraud or corruption in connection with the procurement processes relating to equipment. In fact, DIR observed that adequate records were generally maintained and reflected the proper receipt and dispatch of stock to the intended delivery points, and also found comprehensive patient registers and patient cards showing drugs actually being delivered to end users as intended. The DIR also found that LCD projectors and microscopes were delivered as stated on the revised consignee list and were meeting user requirements. There cannot be a better certificate of good performance. These are all listed on pages 542,562 and 564 of DIR.

The TCP was included in the DIR because certain suppliers found to have colluded in connection with the Reproductive and Child Health Project (RCH) also competed for contracts under the TCP. Accordingly, as stated in the Report, the DIR focused a large portion of its review on those contracts and **entire analysis** of all the tenders between 1999 and 2004 **was only to establish** a so called collusion between these two Companies. **Nothing else related to those tenders has been discussed.** There is little analysis of what prices were quoted by other companies, the number of bidders for different products codes for each year, the awards given to different companies in different years. It has not been noted that price of one company were not even seen because of their de-registration. It is not noted that bid were also considered because of Court directions. Even though there may have been indicators of collusion between these two Companies, contracts were not given to them, even though they were lowest and even when their bids were considered as per judicial directions. These facts have neither been mentioned, nor examined by DIR. No credit is given to the government for ensuring that these companies did not get contracts. Instead concluding that these companies would have succeeded in their collusive scheme of getting large contracts had they not been de-registered, is not only incorrect but gives a completely wrong impression about corruption in the project.

The report acknowledges that only few complaints from tenderers were received which were addressed adequately. More importantly, they did not lead to any change in any contract decision. This is further evidence of both a transparent procurement process and the correctness of the decision making. This conclusion is not reached.

There are other selective quotes or statements made about aspects of the project which tend to damage the credibility of the programme. This would be clear from the following:

1. The DIR report mentions savings in the project because of substantial over estimation in the original cost estimates and decline in the prices of important items including drugs and microscopes. However, this

decline has not been analyzed. As per WHO report 2007, the cost of first line TB drugs is US\$ 16 per patient treated in India, as against the median cost for other high burden countries – US \$ 26 per patient. Our calculations suggest that the cost of drugs for treatment of each patient is substantially lower than the cost of drugs procured by Global Drug Facility (GDF) for other countries as well as for India. This aspect has not been reflected in the report.

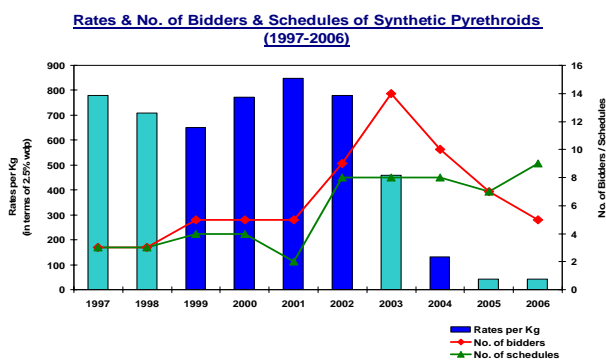
2. The report mentioned about delays in the appointment of the procurement agency as well as in procurement of pharmaceuticals during various years, but it has not analyzed the reasons for delay or the process involved in these procurements. These delays were mostly caused by the long World Bank procedures and TORs advised by the Bank and by judicial interventions.
3. The Report notes that, at the TCPs initiation, the Bank had identified several risks, “including that implementing agencies would be unable to ‘provide’ the leadership and services required to ensure proper implementation of the programme, and supply of drugs would be ‘uneven’ given the ‘spotty record of drug deliveries’ and the potential ‘misuse’ of large quantities of drugs”. However, **the fact that these risks proved to be misplaced, which is also confirmed by the very detailed investigations of this team, has not been mentioned or acknowledged in the report.**
4. The DIR indicates problems in de-centralised procurement. The programme has acknowledged that there are problems in states and districts to conform to World Bank guidelines. The actual value of de-centralized procurement in the districts relating to lab consumables and printing is actually less than 10% of the project cost which the report suggest it to be 50% of TCP II. The Ministry’s suggestion to have alternative methods of procurements for these items were not accepted but this has not been discussed.
5. The DIR had little concern for programmatic indicators or appreciation of the efforts and difficulties of the project and its achievements. The performance as well as quality of services under the programme have been appreciated by different international Joint Monitoring Missions conducted in 2000, 2003 and 2006 wherein the mission teams had visited the field sites and evaluated the programme activities as well as the logistics management within the programme. India accounts for nearly 20% of global incidence and as per WHO Global report 2007, RNTCP contributed 24% of cases notified in 2005 globally. The treatment success of new infectious TB cases under RNTCP has consistently exceeded the global benchmark of 85% over the years. As against 60% of case detection rate globally, India achieved 66% case detection in 2005. As per WHO Global report 2007, deaths due to TB has declined from 42 per 100,000 population in 1990 to 29 per 100,000 population in 2005. National estimates of Annual Risk Of TB Infection (ARTI) prior to 2000 were 1.7% and estimates based on National ARTI survey in 2001-03 is 1.5%. The programme is progressing towards achieving TB related MDGs.

### Malaria Control Project (EMCP)

The findings of the DIR regarding procurement of insecticides viz. Synthetic Pyrethroids are:

- A cartel of four multinational companies operated in the year 2000 – 2002.
- They were given most of the contracts under the World Bank assisted Malaria control project at a significantly higher prices
- The indicators of collusion amongst the cartel members suddenly vanished for reasons unknown in 2004.
- The UK Company, Agropharm, was not awarded contract because of alleged corrupt practice in the Central Insecticide Board under Ministry of Agriculture.

The detailed chart etc. of the procurement of Synthetic Pyretheroid between 1997 and 2006 is given below. The light blue colour rate procured under the domestic budget.



The chart makes the following things clear:-

- 1) Prices under domestic procurement and World Bank project were similar.
- 2) These prices were assessed for their reasonableness in different years.
- 3) The DIR has not made any analysis of market prices, both domestic or international, operating at that time
- 4) The number of bidders has increased over a period of years. This is because of the following reasons : -
  - a. Registration of more manufacturers with the Central Insecticide Board which is the pre-condition for supply
  - b. Earlier rigid qualification criteria as per the World Bank guidelines which was relaxed by the Government later in 2001.
  - c. The World Bank itself mentions that there was no cartel in 1999. But cartel operated in 2000-2002. In 2001, the collusion was noted by RITES and Bid Evaluation Committee. Explanations were called from the bidders. Purchases were still made because of requirements of the programme. The matter was referred to department of INT by local World Bank office. But no response was received. Therefore, it is not correct to say that DIR has discovered this collusion. Further, qualification requirements were reduced by increasing the number of schedules from 2 to 8.
  - d. As a result of this, two Indian companies were able to compete for small quantity of contract in 2002. This has also resulted in marginal reduction of prices. Even their prices were relatively the same.
- 5) Under the domestic procurement of 2003 this process was carried further as more bidders were able to participate for greater quantities. The process reached its logical conclusion in 2004. Therefore, the collusion did not vanish suddenly in 2004 but was the logical culmination of actions taken by the Government from 2001.

If DIR had seen all the contents this larger picture would have emerged.

The UK Company, Agropharm was made technically responsive by the Ministry even against the recommendations of the BEC. This company could not provide the registration certificate as it did not fulfill the requirements of the CIB for purposes of registration. Ministry of Health made high level efforts for this purpose which came to naught.

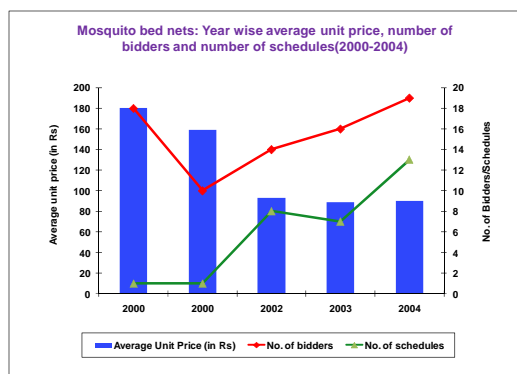
Allegations have been made against CIB based on statements made by their Managing Director and his Indian agent. It would have been appropriate to also simultaneously take the views of the CIB. This matter stands referred to the Ministry of Agriculture for examination.

**Regarding procurement of mosquito bed nets DIR has observed as under:**

- **One supplier failed to fulfill its contract on time.**
- **The project was suspended in part due to procurement bottlenecks.**
- **Two contracts were cancelled due to fraudulent misrepresentations by two suppliers.**
- **The project received numerous complaints about poor quality bednets being supplied.**

**There is also a mention that one group of companies was operating through a joint family and showed indicators of fraud and corruption.**

A Chart given below explains the supply of bed nets.



The following facts emerge:

- While it is correct that there were several companies which had ownership links with the one extended business family, they did not get contracts in several years even when they bid and only part contracts in other years. Therefore, they were not able to stifle the competition.
- The number of bidders actually increased over time
- The prices of bed nets substantially declined during this period.
- The issues of poor quality or delayed supply are non- fulfillment of contractual obligations and is not indicator of fraud or corruption. Further, legal and administrative action have been taken against the companies concerned which has separately been acknowledged in the DIR.

As far as procurement of pharmaceuticals is concerned, the issues that have been brought out in the DIR, which the Ministry was otherwise aware of are being addressed separately. The problems related to supply chain and decentralized procurement are also being separately addressed as already indicated in the Action Taken Notes. It is also to be noted that the proposed Malaria Project decentralized procurement has been kept out of the purview of the project because of the difficulties experienced. As far as the M/s RITES is concerned, they have given a very detailed reply to all the observations made in the DIR which counters them. These are under examination and will be forwarded to the Bank separately later.

## Indian's National AIDS Control Programme Phase-II (1999-2006)

### I. DIR observations

#### NGO's Implementation of Targeted Interventions

##### (1) Selection bias (2) scope for fraud and corruption (3) and poor financial oversight:

#### Response of the National AIDS Control Organization (NACO), GOI:

During the project period Rs.6500 million were spent on interventions implemented by 1200 NGOs among marginalized groups such as Commercial Sex Workers, Men having Sex Men, with Injectible Drug Users, etc. These interventions resulted in increasing condom use and reducing HIV prevalence by more than half. The States visited by the DIR involved 103 NGOs that spent about Rs.330 million during this period. 20 NGOs were inspected.

Despite our request DIR did not provide any evidence to substantiate allegations of bribery or selection bias. Detailed scrutiny of all the 103 files and enquiries found probability of extraneous pressures in 3 cases in Karnataka and about 10 in Chhattisgarh. The amounts spent by these 13 NGOs was not more than Rs.6.5 million.

#### Actions Taken: Prior to review of DIR Report

- Inspections of all 1200 NGOs in 2006-07 resulted in over 25 percent of them being terminated for various reasons.

- Several systemic deficiencies related to (1) strengthening of programme management and oversight, (2) due diligence such as six-monthly external auditing of NGOs; (3) renewal of annual contracts based on an external review; (4) detailed operational guidelines developed etc. are being implemented under NACP Phase-III (2007-2012).

**Proposed further action:**

- Since 2005, NACO concerned about possible fraud in Karnataka and Chhattisgarh but could not take action for want of evidence. However, further investigation for initiating disciplinary action being taken.
- Appoint Ombudsman.

**II. DIR observation :**

**Procurement of substandard kits resulting in wastage of blood and wrong diagnosis of HIV infection.**

**NACO's Findings**

- DIR observations reflected a lack of understanding of the testing protocols and grossly mis-interpreted data by the World Bank Team.
- The above findings of NACO have been revalidated by two international experts from CDC, Atlanta and NRL, Australia.

**Action proposed**

- Systemic deficiencies related to quality assurance and documentation systems are being addressed with help from external consultants from CDC, Atlanta and an expert from Australia. A 5-year Action Plan drawn up.

**III. DIR observations**

**Delayed installation and poor maintenance of blood bank equipments supplied during 2001 in 5 States visited by the DIR team.**

**Response of the National AIDS Control Organization (NACO), GOI:**

Delayed installation and poor maintenance due to –

- Legal dispute over US-based supplier who reneged over their commitments to fulfil their contractual obligations. Inability to ensure performance by the PSA (except confiscating bank guarantee which was done) as 90 per cent of the amounts had already been paid in advance in accordance with World Bank procurement procedures.
- Some amount of laxity in supervision by concerned officers at State/institution level in enforcing contracts. State Governments requested to take action for dereliction of duty.

**IV. DIR observation**

**Procurement related matters**

- **Found fault with appointment of GOI PSUs - NTPC and HLL and excess payment to NTPC without concurrence of Bank.**
- **Alleged splitting of tenders for procuring HIV Eliza kits into various schedules to avoid prior review of Bank.**
- **Alleged later payments and preferential treatment to Nuair Company.**
- **Observed irregularities in local procurement, suggestive of collusive practices of fraud and corruption.**

**Response of the National AIDS Control Organization (NACO), GOI:**

- DIR observations are incorrect. Appointment of NTPC, a ISO 9000 Company as Procurement Support Agency (PSA) was based on ICB. Appointment of NTPC for 4 years and HLL for 1 year had the prior concurrence of Bank.
- Splitting of tenders into various schedules was done in order to encourage more competition. This had the concurrence of the Bank.
- Higher payments to Nuaire for deep freezers supplied in 2001 as compared to the prices paid for similar equipment in 2004 is not compensable as Nuaire was L5 (all other 5 companies having been either technically or financially non-responsive) while in 2004 the eligible bidder was L1.
- Regarding local procurement, the contracting process was found to have been correctly followed except a few instances in Chhattisgarh State. Allegations of same phone or fax number or related parties are not valid since there was adequate competition. In all the case L1 was awarded the contract.

**Food and Drug Capacity Building Project**

**Some glaring examples of DIR misinterpreting and misrepresenting issues and highlighting the same as indicators of fraud and corruption**

**1. Contract No. HSCC/IFB/139CBP/FRSL/PM/BUII/04**

**Contract Description: Construction of FRSL Ghaziabad**

**Date of Award of the Contract: 12.05.2004**

DIR alleges that M/s Dewan Chand (L-1) bidder was wrongly disqualified by BEC on ground that the company failed to satisfy the turnover criteria. Documents available with the PSA M/s HSCC shows otherwise. The firm did not fulfill the requirement of having turnover of more than INR 70 million during any two out of the last five years. Documents are annexed in the detailed response. Furthermore, allegation of DIR regarding BEC not seeking clarification regarding credit facility did not arise as the firm had failed to meet the turnover criteria.

**Before awarding the contract, prior approval of the World Bank was also obtained vide by the PSA vide letter no. nil dated 28.9.2004. (Copy annexed in the detailed response)**

**2. Contract No. HSCC/PUR/CBP(F&D)/ICB-1B/2003/389**

**Contract Description supplier: M/s Electrolab, Item: Dissolution Apparatus with Auto sampler (2 Nos.)**

**Date of Award of Contract : 19.01.2006**

The DIR has alleged that “while bid usually include hundreds of pages, Electrolab’s bid was only 14 pages. Although BER reports that the company was asked to furnish additional documents to supplement its bid, the DIR has seen no evidence that Electrolab has done so. This is a potential indicator of flaws in the procurement process”.

The PSA had sought clarification from M/s. Electrolab vide letter no. nil dated 19.8.2004 to which the time had responded vide their letter dated 14.9.2004 and had submitted documents running to almost 100 pages. The documents are annexed on the detailed response. Therefore, the DIR observations are misplaced.

3. On page 59 of DIR it has been mentioned that “Under the FDCBP, the DIR observed an unusual method in which bids were evaluated and recommended for contract, Typically, contract awards are based on the bid evaluation report(BER) and recommendations of the Bid Evaluation Committee (BEC) under the auspices of the project’s PSA. Yet, for at least three tenders of equipments, *the Ministry of Health and Family Welfare installed a special steering committee* composed by Ministry of Health and Family Welfare official, officials from the PSA, and technical experts to review bid submissions and recommended bid awards.

Yet again the DIR's observations and findings are baseless. **It may be clarified that for smooth implementation of the project, a detailed financial management manual was prepared after due consultation with the World Bank which was later formally vetted by them in the year 2003 (beginning of the project). As per the provisions in the manuals (refer page7-8), a project steering committee was constituted. This committee was mandated to decide on the procurement activities related to the project among other functions. Therefore, there was absolutely no departure from the laid down procedures.**

#### **Submission of forged documents in the case of equipments**

This has been observed by DIR in four contracts. For example, at page 98-100 DIR mentions " case of submission of forged performance certificates by M/s Systronics and M/s Chemito. These certificates look forged, *prima facie*. A detailed investigation has already been ordered. Action would be taken accordingly.

#### **Shortcoming/deficiencies in decision-making /implementation of the project**

The Ministry recognises some of the shortcomings/deficiencies in implementation of the project and also in the process of decision making as pointed out in the DIR.

On the implementation issues, it has already been highlighted in the detailed response that joint inspection teams would undertake site visits from 3.3.2008 to examine the deficiencies pointed out in the DIR and its shall also be ensured that the deficiencies are removed/rectified. PSA has already been directed to initiate rectification work immediately. Furthermore, the PSA has already started taking action against the defaulting contractors by invoking bank guarantee, suspending further release of payment and other penal actions.

#### **Conclusion:**

- All the shortcomings /deficiencies pointed out in the DIR are being examined case by case and wherever indication of wrong doing is found, strict action would be taken.
- The analysis of the DIR reveals that due to lack of consultation and gap in communication between DIR team and MOHFW/PSA has resulted in misunderstanding/misinterpretation leading to several unsubstantiated charges, thereby tarnishing the image of the Government.
- Some observations have also emerged from the report which the ministry feels are relevant and therefore, necessary corrective measures and systemic changes would be undertaken.

#### **ORISSA HEALTH SYSTEMS DEVELOPMENT PROJECT (OHSDP)**

The major components of OHSDP involved civil works at **156** different health institutions including community health centres and sub divisional and districts hospitals and supply/installation of **404 types** of equipments, instruments and furniture (EIF). The project was closed on March 31, 2006

#### **Main issues raised by the DIR**

##### **1) Quality issues:**

- 54 of the 55 hospitals (Project total = 156) visited had construction problems Out of these in 10 cases there were serious deficiencies
- 4 hospitals (project total = 155) were not used
- 17 types of equipments (out of total 404 types under the project) were non compliant with technical specifications
- 5 types of equipments could be potentially hazardous and did not have necessary test certificates. They needed further evaluation and testing.

##### **2) Indicators of bid rigging, fraud and corruption**

- Procurement of design consultants /construction management consultant exhibited bid rigging.
- Lack of certification in cases of equipments indicated fraud and corruption.
- Competition for tenders was low.
- Low price bids were frequently found to be non-responsive.

- Contract prices often exceeded the estimated cost.
- Equipment was not properly installed.
- Lack of personnel to operate provided equipments.

### 3) Audit certification for 2005-06

- There is an Audit certification and report still pending for expenditure made during 2005-06.

#### Limitations and infirmities of the DIR

- The observations made in the DIR were not discussed with the Government of Orissa or the project authorities (Project was already closed). As a result, several factual errors and misinterpretations found in the DIR could not be clarified.
- The project has made many achievements in respect of upgrading health institutions in remote parts of the State of Orissa. However, the DIR does not make any mention of these achievements.
- In some cases of civil works, the photographic evidence shown in the DIR does not relate to the civil works undertaken under the OHSDP but relates to some other previous constructions in the hospitals.
- The procurement of design consultants /construction management consultants was made through a transparent process and was duly approved by the World Bank.
- The procurements were made following World Bank's guidelines.
- As regards 17 types of equipments which have been mentioned as non-compliant and lacking test certificates, it is found that the documents showing their compliance to specifications as well as test certifications are actually available.
- In many cases shown as lowest bidders becoming non-responsive, the Construction Management Consultant (CMC) have evidence to show valid reasons.

#### Action Taken by the Government of Orissa (GoO) on the DIR

- The Vigilance Department of GoO, which has legal powers to investigate and prosecute under Prevention of Corruption Act has been given the responsibility to address all issues of fraud and corruption mentioned in the DIR. The Vigilance investigations have been initiated on 24.01.2008. The Vigilance authorities have already visited 154 sites.
- A **Joint Action Plan** agreed with the World bank with datelines (Table below) and action on all points has been initiated.

Address civil construction issues of hospitals on rolling basis	10 hospitals by March, 2008, 45 by September, 2008 and remaining 101 by March, 2009
Get samples tested and address deficiencies for 5 types of potentially hazardous equipments	March 31,2008
Survey/census of all equipment to address concerns on deficiencies or lack of personnel	Survey by March 31,2008 Action plan by April 30,2008
Audit certification and report	As soon as possible. (Accountant General, Orissa is continuing the audit work and has been requested to expedite)
Health sector systems strengthening	DFID financed plan supports capacity building, including monitoring and evaluation, procurement and financial management reforms in the health sector.



## **DETAILED RESPONSE**

### **(1) Participation of NGOs**

#### **Preamble**

Under the **National AIDS Control Programme, Phase I**, focus was on information, education and communications to the general population on HIV with very limited emphasis on targeted interventions (TI) among high risk population such as sex workers, men having sex with men, injecting drug users etc. As evidence of success of TI became available (e.g., Thailand), the **second phase of the National AIDS Control Programme** in 1999 introduced Targetted Intervention. This is as an important intervention in its prevention strategy. During this phase over Rs. 650 crore was spent over 1200 TI across the country implemented entirely by NGOs'. However, this scale up was in the context a limited capacity to implement and oversee within Government and among NGOs implementation of TIs' was a challenging task in light of the following:

- NGOs were completely unfamiliar with the concept of TI, working with highly marginalized, hidden, and criminalized groups such as female sex workers (FSW), injecting drug users (IDU) and men who have sex with men (MSM). NGOs thus had no capacity to implement TI.
- NGOs were unwilling to take up TI because of the stigma associated with these populations. As such they had to be encouraged to even apply for TI dealing with these populations
- While the government system was familiar with other elements of NACP II's implementation (e.g., blood safety or STI management), GOI's own experience working with NGOs outside the government setup was limited. As such, SACS capacity to build NGO capacity and manage them to outcomes was limited.

In light of these constraints, NACP II embarked upon a steep learning curve in terms of management of civil society organizations working with highly stigmatized risk groups such as FSW, MSM and IDU. The following steps were taken under NACP II with regard to TI:

A four step process was instituted for procurement and management of TI – advertisements, selection based on experience, EC approval of the Executive Committee of SACS and evaluation. The concept of annual contracting of TI was not considered perhaps because of the paucity of existing TI capacity to implement was so stark.

Over the course of NACP II, several learning's were highlighted, capacity was built at all levels and success stories emerged. The TI model was vindicated by several efforts, which included the state of Tamil Nadu, where during the period 2003-2006 HIV levels prevalence dropped from 8.8% to 4.6% among female sex workers and from 1.4% in 2001 to 0.6% in 2006 among ante-natal clinic attendees (a proxy for the general population) through aggressive scale up of TI for high risk groups. The importance of community-led interventions as an effective means of ensuring high levels of condom uptake and HIV prevention – emerged as yet countries key session in community based organization, the prevalence of HIV declined from 11% in 2001 to 4% in 2004 among female sex workers and in another, the prevalence of STIs declined from 26% syphilis prevalence to 12% during 2004 to 2006. But development of CBO's yet again required a new set of skills.

For ensuring programme efficiency in targeted intervention, NACO provided

- Guidelines for the selection of NGO for TI implementation.
- Revised the costing guideline and provided training to SACS officials' guidelines.
- Developed CMIS system
- Conducted an external evaluation in 22 states in 2002-03

#### **The learnings from NACP II were:**

- To Focus on the coverage of High risk population
- Establish linkages between TIs and services like Care and Support, ICTC, ART etc
- Improve the quality of supervision

- Empower the community owned process

Based on the above, under NACP III (2007-2012) following action to ensure quality of targeted interventions has been taken:

- At the start of NACP III, and prior to the DIR review all TIs were evaluated in April - June 2007 and 301 discontinued. At present 757 NGOs / CBOs are implementing TIs for various reasons such as, poor performance, inadequate focus on core target population, irregularities in financial management etc.
- NACO has developed Operational Guidelines for NGOs /CBOs consisting of procedures for selection and contracting with deliverables and outcomes as per outcome indicators.
- A separate TI division with 15 professionals ( vs. one in NACP II) established in NACO ensuring more intensive State level monitoring of targeted intervention, NGO/CBO selection process, fund utilization, programme performance etc. Similar action taken in states
- Further Technical Support Units (TSU) have been created both in NACO and 12 SACS (8 under process). TUSs' are a group of professionals with high level of competency in Targeted Interventions and programme management.
- Established a system of annual contracts under which, all the TIs are required to be evaluated in the 11 month of the contract period. NACO has developed tools for the evaluation, identified evaluators from various states and provided training through five regional level workshops. All the existing TIs will be evaluated by 20<sup>th</sup> March 2008. Renewal of contracts will be based on such evaluation only.
- For redressing complaint a committees consisting of donors and external advisors is being constituted to arbitrate.
- To strengthen the capacity of the State and TI NGOs/ CBOs, NACO has developed 237 Master trainers in various states. Five days workshop have been conducted at five regions with exposure to best practice sites. These master trainers have already trained about 7000 TI staff.
- CMIS system has been substantially modified
- A proposal to appoint Ombudsman to enquire into complaints is being proposed.

### World Bank's DIR Findings & NACO's Response – NGO

	World Bank's DIR Findings	Comments by NACO, if any
	<b>NACO's NGO Selection Guidelines</b>	
1	i) Bribery of SACS Officials <b>Maharashtra, Karnataka, Chhattisgarh</b>	Despite our request, WB failed to give any details As there is no clear evidence of bribery in Maharashtra and Karnataka. However in Karnataka and Chattisgarh indirect evidence in 13 instances point to likelihood of extraneous factors influencing decision making. In both cases based on circumstantial evidence the case is being referred to CBI.
2.	SACS Contract Awards not in compliance with NACO guidelines: a. Inexperience in HIV/AIDS prevention field and community health care and support	a. Keeping in view the fact that under NACP II TI was a new component, availability of NGO's with HIV experience was difficult. Accordingly, NGO's with prior experience in developmental sector were also permitted to be selected.

### (2) Implementation of Test Kit Contracts

## **Preamble**

HIV Rapid Test kits are being used in ICTCs. The test kits are procured following World Bank's guidelines from manufacturers whose kits are licensed for use by the DCG(I). Kits for first test are procured by NACO. The second and third tests are procured by the State AIDS Control societies (SACS). ELISA kits are supplied to blood banks for testing blood. Since December 2005, blood banks are being provided rapid test kits if the number of blood units collected during the day is small. Pre-batch lot evaluation is done at selected National Reference Laboratories before release of kits to the laboratories/ blood banks. As per the standing instructions, sero-reactive blood in blood banks is discarded after the first test. In ICTCs, the first positive result is re-confirmed by testing the sample using two kits with different principles of testing.

## **Observations of DIR**

The team observed that the rapid test kits provided by NACO/SACS were producing invalid, false negative and/or discordant results

DIR also mentioned problems regarding the cold storage conditions and lack of air-conditioning in ICTCs and blood banks.

## **NACO Response**

In 2007, experts from NACO visited various sites based on newspaper reports on Dr. Kunal Saha's allegations, who claimed that he was an Investigator with the World Bank. Findings showed that the allegations were based on a few instances of test results which had been generalized and mis-interpreted.

The World Bank sent two independent experts to review NACO findings; Dr. Robert Martin from CDC, Atlanta in November, 2007 and , Dr. E. Dax, Director of NRL, Australia, in January 2008 to review the records. Both concluded that the allegations made by Dr. Saha appear to be based on lack of understanding of the algorithm coupled with anecdotal information about the company producing the test kits. Dr Dax opined that " the inadequate analysis have raised some erroneous conclusions and therefore, raised inappropriate 'red flags' concerning HIV test results in India". She also said," It is clearly not reasonable to base the indicators on information based on very few of these laboratories and suggest that the conclusions are general".

While some of the observations are factually correct, test kits with sensitivity of 99.8% are used in blood banks to minimize risk of transmission of HIV through blood transfusion. NACO does not agree that this leads to wastage of blood. NACO, however, acknowledges that there is scope for strengthening the EQAS system for the laboratories, standardization of batch lot release and monitoring of cold storage conditions for transportation and storage of kits. Action in this regard had already been initiated **prior to the receipt of DIR Report**.

## **Analysis of the DIR report revealed critical areas that need to be strengthened during the NACPIII**

- More rigorous training of Lab technicians
- Standardized protocols for kit evaluation (pre batch testing) by the NRLs
- Strengthen site supervision to ensure adherence to guidelines.
- Standardization documentation and maintenance of stock registers and inventory
- Establishment and enforcement of Standard Operating procedures for assuring quality such as use of controls for validation of tests each time they are run
- Systemic strengthening of the quality assurance system which has to be documented and used as an alert system for quality testing
- Systemic guidelines for complaint redressal on quality issues with test kits

## **Action taken**

- In December 2006, a Technical Resource Group was constituted by NACO for Laboratory Services to advise on issues related to quality assurance.
- NACO has prepared technical guidelines for HIV testing, quality standards, Laboratory technicians manual and manuals for CD4 sample collection, transport and testing.

- Standard modules have been prepared for training of ICTC technicians and ART technicians in forty training institutions.
- Development of systems for reporting and investigating ‘exceptions’. Under this, a System of reporting the panel results has been developed where the SRLs report the discordant test results along with the name of the testing centre giving discordant results to the respective NRLs. The same is done at the NRL level where the SRLs are assessed and the final report is compiled at the Apex lab which is shared with NACO annually.

In case there are exceptions where a batch of kits is found to be performing sub optimally, the in charge of the ICTC is required to prepare a detailed report and sent to the respective SACs. The manufacturer along with NACO is informed and the batch is withdrawn, if required and detailed enquiry at the central level is done if required.

### Action Plan

#### Need for the Development of Laboratory and Quality Systems

The need for the strengthening of laboratory and quality systems in Indian laboratories is recognized and need to be strengthened by 2012 (within NACP III) as below:

#### 1. Issues for immediate action for strengthening Quality assurance in laboratory practices. ( 1 YEAR)

- a. Cold chain maintenance : To put in place foolproof systems that ensure adequate cold storage to testing sites and storage at 2-8 deg C
- b. Training of technicians at the ICTC sites and reviews the curriculum to ensure greater rigor.

#### 2. Development of an Apex laboratory into a quality assurance pinnacle group consisting of experts (1YEAR)

#### 3. Ensuring ongoing availability of high performance kits (2 YEARS)

The validations will involve kits for both blood banks and ICTCs before licensing.

This procedure needs to be strengthened with the Drug Regulatory Authority so that the issues of kit quality are adequately addressed before license is given to the manufacturer.

- Uniform protocols to be developed for pre batch validation of test kits and the panels
  - Three laboratories will be identified to carry out these regular validations.
  - Suitable validation panels will be prepared for every kit by the Apex laboratory
  - Ensure that kit evaluation does not delay in availability of kits at the field and that all kits supplied have adequate performance and expiry dates
  - In the long term, make it mandatory for manufacturers to prepare large batch sizes to prevent batch to batch variation.

#### 4. Upgrade Procurement Procedures (2-3 YEARS)

To ensure that kits used as second and third line kits in India’s testing strategy are either supplied by NACO or develop systems that enable SACS to ensure that each site has the same second and third kit at least 1-2 years to ensure monitoring quality and redressal of variations if any.

#### 5. Strengthening of EQAS (4 YEARS)

To ensure that the existing EQAS is strengthened and regular feedback from laboratories is received and assessed, a quality control program will be developed

- To build the ability of the Apex group to preparing appropriate QC samples for each kit that is distributed, to facilitate monitoring the kits’ performances on a day to day basis.

#### 6. Quality Assurance IT Infrastructure (3-4 YEARS)

To build or employ a system for on line reporting to ensure a data base which can be evaluated and implemented for ensuring continuous improvement by 2012.

S N	World Bank’s DIR Findings	Comments by NACO, if any
I	A. Implementation of Test kit Contracts: Poorly performing Test kits:	

1	The DIR observed that a number of test kits procured under the NACP-II performed poorly by yielding invalid test results and /or unusually high false positive, false negative or otherwise discordant results.	<b>This is not true.</b> The observation is based on a few incidents in selected ICTCs and hospitals. The data was mis-interpreted.
2	At blood banks, which screen and store blood for transfusions, false negative results carry the serious risk of transfusion-transmitted infections, while false positives result in the wastage of blood.	The blood banks are provided with kits with sensitivity of 99.5% or more to minimize the risk of transfusion transmissible diseases. NACO does not agree that this is a wastage of blood as this is a cautionary measure to prevent transfusion transmitted infection.
3	At VCTCs, which test patients for HIV, false negatives can result in the further spread of HIV by infected persons, while false positives can impart a social stigma and psychological distress on the patient.	Rapid test kits with sensitivity of 99.5% and specificity of 98% are used. Positive results by the first test are confirmed by repeating the test with two other kits using different principles. A positive test is not disclosed unless all three tests are positive. These are standard international guidelines recommended by WHO and UNAIDS. Thus, false negatives are not reported.
4	These performance problems were particularly prevalent in the kits supplied by three suppliers: Monozyme India Ltd.(Monozyme), Span Diagnostics Limited (Span Diagnostics), and Zhongshan Bio-Tech Co. Ltd (Zhonghsan).	The performance problems mentioned in the DIR report are isolated instances / misinterpretation of facts.
<b>I <i>Invalid, False Negative, and/or Discordant Results with Test Kits Supplied by Monozyme.</i></b>		
5	In late 2006, the Indian media reported that Monozyme had been distributing expired diagnostic test kits in West Bengal, and had in some cases been substituting pregnancy test kits for HIV diagnostic test kits.	It is a fact that in 2005-06 Monozyme supplied expired HCV and HBV rapid test kits to blood banks in West Bengal. No HIV kits were supplied and there was no instance of pregnancy kits being substituted for HIV diagnostic kits. (Details attached)

### (3) Implementation of Blood Bank Equipment Contracts

#### Preamble

Under the National AIDS Control Programme, 1092 Blood Banks in the country collecting over 5 million units of blood every year are being supported by providing essential equipments. Funds are also provided for procurement of consumables, diagnostic kits, salary of one technician and Annual Maintenance Contract for equipment procured under the programme. The support is provided to the blood banks through State AIDS Control Societies as grant-in-aid. Out of the 1092 blood banks, 85 blood banks have been provided additional equipment including -40<sup>0C</sup> and -80<sup>0C</sup> deep freezers, for establishment of Blood Component Separation Units.

#### 1. DIR Observations

DIR team visited blood banks in 5 States and made the following observations in the report:

1. Non-installation / late-installation and premature delivery of Deep freezers in 4 blood banks;
2. Delivery of superfluous equipments such as water bath;
3. Non functioning and faulty parts in equipments like Blood bank refrigerators.
4. Non-servicing and Irregular servicing of equipments

#### 2. Comments

Four teams from NACO went to States visited by DIR team for detailed fact finding of matters raised by the DIR. The observations in the DIR report are largely related to non installation / delayed installation and none functioning of temperature record charts in deep freezers supplied by Nuair Inc. USA and non functioning of Blood bank refrigerators supplied by M/S Remi Instruments Ltd.

Regarding equipments supply, specifications of the equipments to be are finalised by a Technical Specification Committee consisting of experts in the field of Transfusion Medicine. However, delays in installation and absence of Comprehensive Maintenance Contract (CMC) and calibration etc. were on account of no response from the supplier.

### 3. Actions proposed

- (i) As a part of the contract, apart from the pre-dispatch inspection, UNOPS will undertake post-installation inspection by outside experts;
- (ii) The warranty period and maintenance period of all equipments supplied during NACP – II is over in year 2007. For these equipments, with effect from Financial Year 2008 – 09, earmarked funding will be made available to SACS to enter into a Comprehensive Maintenance Contract (CMC) and calibration of all the equipments including the equipments mentioned in the DIR report.
- (iii) Regular by-yearly review of functional status of equipments backed by intensified field inspections by NACO/SACS.
- (iv) In the medium term, a proposal to establish National Blood Transfusion Authority is under process.
- (v) To ensure safety standards and adherence to protocols, a draft law to regulate blood collection/processing and distribution is under review.

The detailed comments on each of the observation in DIR report are as under.

S	World Bank’s DIR Findings	Comments by NACO, if any
<b><i>I. Installation Problems; Pre-mature delivery and Delivery of Superfluous Equipment; Non functioning and Faulty Equipments</i></b>		
1	<p>The DIR learned that the chart recorders of both the -40° C and -80° C freezers had been out of order at least since the date when the freezers were put into operation in 2005. However, based on the installation reports and acceptance certificates signed by the blood bank officer, it appeared that the chart recorders were found compliant when the freezers were installed and tested in June 2001. <i>Similar observations regarding non working of compressors in another hospital.</i></p>	<p>M/s Nuair failed to meet the obligation under the contract during warranty and maintenance period.. Deep Freezers were repaired locally by MSACS and are now functioning with digital display of temperature which is recorded manually. The Chart Recorder is not functioning. The temperature recording is done manually.</p> <p><i>Action Taken: NACO is providing funds to the State AIDS Control Societies (SACS) for a comprehensive maintenance contract including replacement of minor equipments and calibration.</i></p> <p><i>Expert Groups are being constituted including a senior expert in the field of Blood Transfusion, to visit major blood banks collecting more than 5000 units of blood per annum for assessment of the functional status of the blood bank.</i></p>
<b><i>III. Disincentive to Honor AMC and Warranty Obligations</i></b>		
4	<p>The DIR observed that the manner in which suppliers were paid may have created a disincentive for suppliers to honor their AMC and</p>	<p>As per SCC clause 11 read with GCC clause 16 payments were made to the suppliers as per the following conditions:</p>

<p>warranty obligations. The director of the KGMU Hospital in Lucknow explained that once the PSA made the 90 percent payment of the contract value to the supplier upon shipment, the supplier had little incentive to fulfill further obligations, including warranty and the AMC. This was because the local servicing agents designated by the supplier received the remaining 10 percent of the contract value upon equipment installation—thus, there was no incentive for either party to attend to its service obligations. The director added that the five percent performance guarantee that the suppliers were required to furnish to the PSA upon signing its contract did not serve as a sufficient safeguard against the risk of poor or non-performance by the suppliers or their agents, as the cost of the guarantee was already built into the 90 percent upfront payment, and was easily recovered through the higher cost of equipment.</p>	<p>10% was advance within 30 days after signing of the contract  80% was after the dispatch of goods thro’ irrevocable letter of credit  10% on final acceptance upon submission of the Goods Acceptance Certificate. Agency commission would also be made within 30 days of presentation of claim if the contracted services have been performed.</p> <p>As the local agent was entrusted with the task of installation the supplier was not interested with installation as he had already received 90% of the contract amount.</p> <p>The AMC amounts quoted for comprehensive AMC inclusive of spares was fairly low as this was a part of the bid evaluation process. Hence subsequently the suppliers looked for opportunities to wriggle out of their contractual obligations to provide AMC. As per SCC clause 11 read with GCC clause 16, 2% of the contract amount would be retained as a bank guarantee for the compliance of the AMC for 48 months from the date of completion of the warranty. However this was too small amount to ensure compliance from the suppliers or their agents.</p> <p><i>Action Taken : It is recommended that a change to the extent of retaining 20% of the contract amount till satisfactory performance of the warranty obligations be made. The Bank should review the payment conditions given in the standard bidding document especially where equipment is involved. Proper asset management is necessary for which all assets should be identified, marked giving details of the AMC status including the focal person to be contacted when there is a breakdown. The gap between the end users of the equipment and the AMC contractor needs to be reduced to ensure better responsiveness. Closer review of the AMC contractors at the SACS level has to be done.</i></p>
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**(4) International Procurement of Test Kits and Blood Bank Equipment**

**I. PREAMBLE**

During NACP-II (1999-2006), procurement by NACO was largely restricted to blood bags, equipments and diagnostic kits. These were to be procured in accordance with the International Competitive Biddings. The State Governments were permitted to procure drugs e.g. STD drugs and second and third antigen kits for confirming tests, consumables, blood bags, equipments and low cost equipments required for the labs, etc. of national competitive bidding such as blood bags and low cost items based on local shopping bids for a value of US\$ 30,000. The local shopping involved obtaining bids from 3 vendors while the national competitive bids require printing of

advertisements in the newspapers and selection of the best bid based on a technical and financial quotations as per the procedures of the State Governments. The National Competitive Bid was permitted for goods within the value of US\$ 30,000 to 3,00,000.

Broad guidelines for procurement procedures based on the negotiations with the World Bank were communicated to all the State AIDS Control Societies. In NACO, a professional procurement agency was appointed based on an International Competitive Bidding and in accordance with the World Bank procurement guidelines. The State Governments, however, had no such procurement support agencies.

In 2006, a midterm review of the NACO procurement processes was undertaken by the Administrative Staff College of India. Lessons from this review were included in the procurement manual and operational guidelines for NACP III.

**The DIR observations**

All procurement files of NACO were reviewed, field visits to 5 States to examine the records and verify deviations, undertaken.

The DIR in brief found several problems in the international procurement process, including, for example, questions as to the procurement and credibility of the PSA, long delays between the bid opening and the contract award dates, unusual pricing patterns, poorly performing agencies being made eligible for competing in subsequent tenders; and indications of fraud and corruption in the procurement process.

**ACTION TAKEN BY NACO**

All 91 procurement records were examined by NACO team. For verifying the observations of the DIR, four teams visited Orissa, Maharashtra, Chattisgarh and Karnataka to collect evidence of any wrong doing. Shortcomings with respect to documentation and deviance from procurement procedures were found.

Prior to the DIR review and as a part of the NACP III project preparation, as follows:

1. UNOPS has been identified as PSA for the current year.
2. A Procurement Manual has been developed delineating the procedures, processes, powers etc., of procurement of goods, service and works.
3. Establishing six monthly procurement audit by accredited auditors appointed by NACO under finalization.
4. Hiring of additional and dedicated procurement staff at NACO and SACS level and training in procurement systems have already been carried out during this year by lead agencies in the country. All procurement details posted on the website; and redressal mechanism established for complaints.

B) Based on the detailed observations of the DIR responses and the action taken are given below:

Sl. No	World Bank’s DIR Findings	Comments by NACO, if any
A.	<b>Questions as to the Procurement and Credibility of the PSAs</b>	

	<p><i>Unexplained Reimbursable Expenses in NTPC's Contract Award and Complaints as to Its Competency.</i> NTPC appeared to have received unwarranted payments in its award as a PSA. NTPC submitted, and NACO awarded, a contract to the company consisting of INR 68.2 million (USD 1.5 million) in lump-sum compensation, INR 133.3 million (almost USD 3 million) in reimbursable expenses incurred locally, and a “foreign ceiling” of USD 150,000. However, NTPC’s bid submission had already accounted for reimbursable expenses, so the reimbursable expenses awarded by NACO—which amounted to more than double the contract’s value— appeared to be an additional sum over and above the contract award amount.</p>	<p>Not correct. A pre-award checklist and draft contract for the no-objection of the Bank for the engagement of NTPC as a procurement agent was submitted on 15<sup>th</sup> September 1999. The contract amounts specified was USD 150,000 towards foreign travel as reimbursable expenses, Rs. 68,187,846 as lump sum expenses for setting up the office and Rs. 133,266,000 for sundry expenditure. The Bank vide its letter dated 18<sup>th</sup> September 1999 indicated their no-objection to the proposal as stated above. Payments were made strictly in accordance with the contract.</p>
2	<p>With respect to NTPC’s qualification, two witnesses interviewed by the DIR, including an equipment distributor and a test kit supplier that had participated in NACP II tenders, questioned NTPC’s competency. The equipment distributor stated that NTPC lacked knowledge about the equipment to be procured, and were often educated about the technical specifications by distributors. The test kit supplier described NTPC as not being conversant in medical tests. Moreover, according to the Minutes of the Meeting of the Technical Evaluation Committee, NTPC had past experience on five Bank-supported projects, but did not have any health-sector or AIDS-related project experience. Thus, the selection of NTPC as a PSA appears to be problematic, both in terms of the payments it received and in terms of its qualifications.</p>	<p>The process for the selection of the Procurement Agent was monitored by the Bank at every stage. An international bid was invited as per QCBS method. Out of the 93 expressions of interest a shortlist comprising of the following agencies was made: Crown Agent, RITES, NTPC and MECON. None of the shortlisted agencies had health sector experience at that point of time. Among them NTPC had secured the best score and awarded the contract with prior concurrence of the Bank. NTPC is a ISO 9001 company and a highly rated public sector company which had rapidly scaled up their involvement in power sector with Bank assistance and hence were found suitable to handle procurement under Bank norms.</p> <p>Issues related to development of technical specifications and modifications are the mandate of NACO. The system for dealing with representations of bidders on technical matters was, to refer them to the appropriate Technical Committees consisting of external technical experts.</p> <p><i>Action Taken : The mid-term review report of the Bank had commented adversely on the considerable delays and found the procurement implementation unsatisfactory. A review was conducted by Administrative Staff College of India at the instance of NACO. Wherein various deficiencies were listed out. Based on this report contract of the NTPC was allowed to lapse on the 13<sup>th</sup> September 2003.</i></p>
3.	<p><i>Award of Local Contracts to HLL While Serving as PSA.</i> On September 30, 2005, NACO contracted with HLL to replace NTPC as PSA until March 30,</p>	<p>As there was only one and a half years for the closure of NACP II was available, identification of a new procurement agent through QCBC was</p>

<p>2006, the closing date of the NACP II. NACO's selection of HLL raises questions, since HLL had already been a supplier of goods under the NACP II and since the Bank had already expressed reservations with the selection of HLL as a PSA. The Bank had previously asserted that serving as both a procurement agent and a supplier of goods for the project would amount to a conflict of interest, in violation of Bank guidelines for selecting consultants. Moreover, the Bank had previously recommended terminating HLL in the RCH and Rajasthan Health Systems Development Projects after an independent assessment found serious deficiencies in the capacity of HLL to perform as a PSA.</p> <p>An NACP II project team member explained that there was a clear understanding that HLL would not receive any Bank-financed contracts while acting as the PSA on the NACP II. The DIR analysis of the NACO-procured contracts confirmed that HLL was not awarded any contracts. Nonetheless, based on local procurement information provided by three different SACS (Maharashtra, Karnataka, and Orissa), the DIR determined that HLL won 10 contracts procured locally by the SACS while it was serving as the PSA on NACP II, nine of which were awarded before the project closing date of March 30, 2006.</p> <p>Thus, the DIR noted issues related to the selection of PSAs under the NACP II that merit further attention.</p>	<p>not possible. Accordingly on September 23<sup>rd</sup> 2005 Government proposed to appoint HLL as a PSA which was concurred to by the Bank vide its letter dated the 18<sup>th</sup> October 2005, based on the fact that HLL had taken several steps to address deficiencies identified in the DFID assessment study.</p> <p>World Bank concurrence was given at the same time when the issues related to the Rajasthan Health System Project were taken up. It is presumed that the Bank was fully aware of the issues involved. Hence the question of HLL recusing itself from any procurement at the SACS level does not arise</p>
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2.	<p><i>Avoidance of Prior-Review Thresholds</i></p> <p>In a number of tenders procured by NTPC, the DIR observed what appeared to be split purchasing, which occurs when a quantity of goods and services are divided or not consolidated for the purpose of evading a threshold limit or competitive-bidding requirement. The DIR's analysis showed that the cumulative value of the separate schedules within six test kit packages procured by NTPC amounted to more than USD 300,000—the amount that triggers prior review by the Bank—and that one of these packages was valued at over USD 1 million. NTPC divided five of these packages into multiple contracts that were each valued at less than USD 300,000, and the Bank prior reviewed contracts from two of these packages. The necessity for splitting these packages appeared questionable because an earlier Bank-financed procurement (IFB 1-1) and later non-Bank-financed procurements (IFB 32, Schedules 1–8, and IFB 34) were not consolidated. There was no information available to the DIR to verify whether the Bank had approved the breakdown of these packages into multiple contracts below the prior-review threshold, though the Bank requested the practice be stopped in February 2006. The six packages valued at over USD 300,000 procured by NTPC are set out in Figure 2.</p>	<p>Proposal for multiple scheduling of test kits was mooted under IFB 15 for HIV (Elisa) kits from NACO by letters dated 30<sup>th</sup> July and 16<sup>th</sup> August 2001 to have eight schedules based on a regional zoning pattern. In order to accompany competition and attract more bidders who are able to comply with the post qualification requirement of having a demonstrated capacity to supply at least 50% of the quantity being offered. Secondly splitting the quantities into various schedules was essential in order to facilitate domestic competitors to bid. World Bank accorded approval for the splitting up of the packages into multiple schedules for HIV kits vide letter dated 23<sup>rd</sup> August 2001. This letter was received from the Operations Advisor of the Bank and therefore it is not true that this proposal of splitting did not have the prior concurrence of the Bank. It is however a fact that the Bank did issue revised guideline in February 2006. Under these revised guidelines prior revision of all such tenders would be based on cumulative value and not the value of individual schedules.</p>
<p><b>C. Indicators of Fraud and Corruption in the Procurement of Blood Bank equipment</b></p>		
1	<p><i>Schedules Awarded to Kendro.</i> Kendro was awarded three contracts to supply a total of 88 refrigerated centrifuges totaling USD 1.3 million between 2000 and 2003. (These were CW9213/NACO/IFB-02/A/Item I, CW9213/NACO/IFB-17/Schedule I, and CW9213/NACO/IFB-25/Schedule I, awarded on Nov. 30, 2000, Apr. 5, 2002, and Dec.30, 2003, respectively.)</p> <p>Although at least 14 bidders purchased the bidding documents on each of the tenders, each time less than 20 percent of the bidders who purchased the bidding documents actually submitted a bid. The procurements also exhibited high non-responsive rates. The bid submission and non-responsive rates for three contracts won by Kendro are outlined in Table 16.</p> <p>The limited number of bidders on these tenders may</p>	<p>6 Bids were received for the procurement of refrigerated centrifuges. All these were found to be non-responsive, either commercially or technically or both. As re-bidding was not considered to be a suitable option due to the time it would take, the two technically responsive bids were considered. The one with a lower financial bid was however not considered as it did not meet the post -qualification supply criteria. Accordingly Kendro was recommended by relaxing the conditions related to the bid security. The No-objection of the Bank was obtained vide their letter dated 30<sup>th</sup> October 2000.</p> <p>One of the competitors M/s Remi raised a query as to the necessity of having 12 bucket centrifuge to hold even a 450 ml blood bag in each bucket. Remi were producers of 6 bag centrifuge. In raising the requirement Remi argued that competition would be restricted to only foreign</p>

	<p>have been a function of restrictive technical specifications. For example, although the technical specifications for IFB 2A-1 were subsequently amended, the Bid Evaluation Committee (BEC) stated that “it is not expected to have better competitive bidding in case of re-tendering with same specifications as there are only few manufacturers who can meet this specification. Prospective bidders on IFB 2A-1 queried the technical specifications, raising doubts as to the conventionality of the specifications as stated in the bidding documents. Another bidder claimed that the specifications were designed such that “all manufacturers except one specific German manufacturer should be specifically disqualified on specifications.”( <i>Ibid.</i>)</p>	<p>manufacturers.</p> <p>The representation of Remi was taken up in the Technical Committee on the 6<sup>th</sup> July 2001. The representation was rejected on the ground that blood banks required to be provided equipments that would address future requirements which were to increase. Further with the introduction of red cell preservative solution and leuco reduction filters, the blood bags sizes would also need to be larger. It may be pointed out that the same technical specs are still being followed even now.</p>
2	<p><i>Schedules Awarded to Remi.</i> There were two contracts awarded to Remi for the supply of 204 units (102 per contract) of blood-bank refrigerators. (IFB 2-5 and IFB 17-5). Both contracts won by Remi had low bid submission rates of approximately 30 percent, and high non-responsive rates of more than 50 percent, as indicated in Table 17. (Evaluation Report for Package (v) “Blood Bank Refrigerators”—102 nos. (Sep. 27, 2000); Evaluation Report for Package (v) “Blood Bank Refrigerators”—102 nos. (Mar. 4, 2002). Again, such findings might merit further attention.</p>	<p>In both the cases Remi was the L1 out of a field of 7 and 4 responsive bids respectively. As per Bank guidelines, even one successful bid has to be considered. Secondly, rejection of bids without any valid grounds could also invite litigation.</p> <p><i>Action Taken: Bank may take a fresh look at their guidelines for procurement of goods.</i></p>
4	<p><i>Contract Awarded to Nuair at Inflated Price</i> By comparing the unit prices on a freezer contract awarded to Nuair in 2000 to the unit prices on contracts awarded to other suppliers in 2002 and 2004, the DIR observed that Nuair may have been awarded the contract in 2000 at an inflated price. Specifically, in 2000, NTPC awarded Nuair a contract under IFB 2A-3 for 42 -40° C deep freezers at a unit price of INR 318,768 (USD 7,083); in 2002 and 2004 however, other suppliers were awarded contracts for significantly fewer -40° C freezers at unit prices 23 percent (in the case of the 2002 contract) and five percent (in the case of the 2004 contract) less than the unit price on Nuair’s contract. These lower prices were achieved despite inflation and despite the significantly lesser quantities procured, raising questions as to the competitiveness of the procurement for the contract won by Nuair.</p>	<p>The bid of Nuair was L5. In the subsequent bid there was greater competition and lower prices were obtained. Moreover negotiations with suppliers is not permitted as per Bank guidelines. The freezers were procured based on a ICB. 12 Bids were received. Of them only Nuair, which was L5 was found to be technically and financially respective.</p> <p>In 2002 and 2004 the bidder who got the contract was L1 in both cases.</p> <p>Therefore, it is not correct to compare a L5 price with a L1. Secondly, NACO was pricing such equipment for the first time in 2000 and had no benchmarks to assess the estimate value of the equipment.</p>

6	<p><i>Preferential Treatment Accorded to Particular Bidders by NTPC</i></p> <p>The DIR found instances where NTPC appeared to have given preferential treatment to certain bidders.</p> <p><i>Last-minute Change to Annual Maintenance Contract Obligations of Nuaire.</i> According to the BER, Nuaire submitted AMC prices for four years of service for the contracts it won (<i>Ibid.</i>; and Evaluation Report for Package (iii) “Deep Freezers (-40° C)”—42 nos. (Aug. 20, 2000)). The pre-award minutes, however, indicate that this four-year requirement was changed to two years (Minutes of Pre-Award Meeting for Item (III): “42 Nos. Deep Freezers -40° C” (Oct. 6, 2000) for IFB No. CW-9213/NACO/IFB-02/A of Second National AIDS Control Project of NACO (undated); and Minutes of Pre-Award Meeting for Item (II): “42 Nos. Deep Freezers -80° C” (Oct. 6, 2000) for IFB No. CW-9213/NACO/IFB-02/A of Second National AIDS Control Project of NACO (undated).). This AMC period change was reflected in the Letter of Award (Letter of Award Ref. No. CW-CM-9213-C-02/0A/03-008 (Oct. 6, 2000); Letter of Award Ref. No. CW-CM 9213-C-02/0A/02-008 (Oct. 6, 2000).). It was unclear whether this change was initiated by Nuaire or NTPC. However, the DIR notes that if Nuaire had proposed a two-year AMC rather than a four-year AMC in its original bid submission, it should have been disqualified for non-compliance with the bid specifications.</p>	<p>The observation of the DIR <b>is not correct</b>. The bid document requires that the bidders provide for 2 years warranty and a 4 year comprehensive AMC inclusive of spares.</p> <p>In order to assess any BER variation in the amendment of the award, it was observed that Naurie had offered an extended warrenty for 4 years on against 2 year request and charge money for another 2 years.</p> <p>The fact that the warranty was being extended for a further two years was a beneficial situation for NACO. Accordingly we do not see any merit in the DIR observation.</p>
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**(5) Local Procurement of Test Kits and Blood Bank Equipment**

DIR reviewed the local procurement by the SACS of test kits and blood-bank equipment. These local procurements were performed using either NCB, national shopping, local shopping or direct contracting procurement methods. Observations made were - Inadequate record keeping, inter-bidder and Intra-bidder unit prices vary substantially, sequentially numbered bid securities issued by the same bank on the same date by separate companies, unreasonable delay between bid closing and contract award dates, inadequate advertising, contract splitting, inappropriately Low Number of Bidders, incorrect Method of Procurement, favourable Treatment Accorded to a Bidder.

In order to investigate the observations and allegations made in the DIR in relation to wrongful selection of NGOs, bribery and corruption, 4 teams have been constituted to go to all the four States visited by the DIR team, namely, Chhattisgarh, Karnataka, Maharashtra and Orissa. These teams consist of an external expert, a representative of NACO and a senior finance expert.

Sl.No.	World Bank's DIR Findings	Comments by NACO, if any
2	Variation in inter bidder unit prices. The DIR identified 12 contracts where the unit prices offered by competing bidders varied dramatically and/or the unit prices submitted by the same bidder for the same item differed substantially	Variation in inter bidder unit prices as mentioned in the DIR report was confirmed. However, it was observed that variation in the rates were mostly due to errors in the quotations and subsequent calculations. For example, tenders have been received from firms selling gum bottles and liquid soaps of 100 ml and 300 ml sizes. However, comparison was made on the basis of one unit price; the sizes seemed to be erroneously missed out. <b>In all cases contracts were awarded to the lowest bidder.</b>
3	Contract splitting.	It was clarified that there was no intentional splitting of the contracts. The orders were for from different units (VCTC and PPTCT) but for similar items. Given that consumables for VCTC and PPTCT are almost similar, the DIR has concluded that contracts were split etc. The Team found no wrong doing in this case.
4	Inappropriate low number of bidders. The Bank's Procurement Guidelines require that a minimum of three bidders participate in local-shopping procurements.	The procurements were made under NCB. It was clarified by NACO vide letter no. P11016 / 17/ 2002 –NACO dated 28 / 2/ 2003 that procurement under national shopping can be made even if there are less than three bids provided the reason of receiving lesser number of bids is not due to restricted publicity or confusion in Terms of Reference (TOR).
6	Similarity in language and presentation in competing bids.	The issue examined by the DIR related to procurement of five medicines for which five companies submitted quotes. For each medicine the company which gave the lowest quotation was awarded the contract. It is clarified that in small towns some of the venders are not computer savvy and hence they seek the assistance of local typing shops (which are available in plenty in several parts of the country) to fill in their bids. These typing shops have pre-set formats which they use, hence similarities. In each case there are more than three

		bidders with good competition and contracts awarded to L1 parties.
9	Limited number of companies winning the overwhelming majority of contracts The DIR also analyzed the 47 contracts to identify instances where particular companies appeared to be winning the overwhelming majority of contracts	The reason Star Diagnostics and J. Mitra & Co. Ltd won most of the contracts for blood bags and laboratory items is that they are manufacturers and therefore were at an advantage over other distributors for either these companies or other manufacturers. J. Mitra won contracts worth Rs.3.15 million or 45.9% of the total procurements while Star Diagnostic was awarded contracts worth Rs.1.36 million or 19.8% of the total. The balance 35% of contracts was awarded to other distributors.
<b>Procurement of HIV test kits by MDACS</b> <i>Case study 1: (page no.405) Indicators of fraudulent and corrupt practices on local contracts won by Monozyme India Ltd.</i>		
1	<i>Certificate of good manufacturing practices (GMP) submitted by Monozyme appeared to be fraudulent (p405)</i>	The DIR says that the first GMP certificate produced by Standard diagnostics for the September 20, 2003 tender did not carry the official letterhead of the Korea Food and Drug Administration and did not show the validity period . The second GMP certificate submitted by the company at the request of MDACS appeared to be a replica of the same GMP certificate, now with valid dates stamped on it (annexure R-5). <b>Recommendation:</b> In the light of WB observation, it is suggested that both the GMP certificates be sent to the Korean Embassy for verification and advice.
2	<i>A Monozyme competitor was eliminated despite offering the same product at a lower price.(p.406)</i>	The DIR finding is misleading. It is to be noted that the quotes submitted by Peerless and Monozyme were for two different products and therefore not comparable. Peerless had submitted the quotation for its kits with 8 kits in a <b>strip format</b> at the rate of Rs.25 per test and for <b>device/ card format</b> at Rs.38 per test. In a VCTC, a serial test procedure is followed. All clients are tested with the first test provided by NACO. Only the clients who test positive in the first test are tested with the second test kit and only those who test positive in the second test are tested with the 3 <sup>rd</sup> test kit. Typically, in a VCTC with a low volume of daily attendance, only 1-2 clients will be tested with the 3 <sup>rd</sup> test kit. In such a situation, the strip test kits are unsuitable because the unutilized 6-7 test kits in a strip of 8 test kits cannot be utilized for testing in subsequent days and have to be discarded. The quotation of Monozyme is for single test in <b>device/ card format</b> at the rate of Rs.37.76 per test. Hence the quotation of Monozyme is the lowest for the <b>device/ card format</b> . The NACO specification provided by MDACS says that provision should be

		made for conducting a single test at a time.
		<p><b>Conclusion</b></p> <p>To sum up, the DIR Team has not made a fair assessment of the situation in Maharashtra SACS and DACS. In certain cases the findings lack the basis on which the Team raised the finding. In other cases the finding lacked conclusion and the effect of the alleged wrong doing on the operations. The staff we interviewed alleged that the DIR Team did not provide them with an opportunity to look at the draft report or comment on findings before issuing the final report.</p> <p>The allegations of corrupt practices in contract awards to NGO's, fictitious NGO's and bribes to government officials were not substantiated. In the case of diagnostic test kits, some of the findings of the DIR team are upheld both with regards to poorly performing test kits and non-maintenance and upkeep of equipment at blood banks.</p> <p>Finally, the procurement process has been correctly followed based on files and documents reviewed and our interviews with the staff.</p>

**INCONSISTENCIES IN THE DIR REPORT RELATING TO NACP**

<b>ICB/NCB</b>	<b>VALUE</b>	<b>NATURE OF DEFICIENCY POINTED OUT</b>	<b>OUR REMARKS</b>
NA	NA	In Maharashtra, the DIR visited the supposed address of an NGO receiving funds and found nothing resembling an NGO office. Instead, the location was a large residence, and the owner said that the space had not been used by any NGO. (See Photograph 1 on page 410.)	By an e mail to Mr. Simon Robertson of the INT a request was made as to the name of the NGO which was depicted in the photograph given in the DIR. We are yet to get a response. It now appears that the NGO Samabhavana Society has sent a letter to NACO with certain facts. In the letter dated 6 <sup>th</sup> February they have claimed that the photograph shown was the registered address and not the operational office. They had two operational offices – one in Pune and another in Mumbai for the two projects which was in the knowledge of the MSACS. The leader of the INT team Mr Bwana who had

			visited the purported office had then spoken to the Secretary and she had directed them to the operational office. However the INT team without visiting the office had misinterpreted the facts.
NA	NA	The DIR visited the address listed in Zhongshan’s bid documents for its local distributor, Spectra Pharma and Health Products, and found a Chinese restaurant called The Golden Dragon. (See Photograph 2 on page 410.) This raises questions as to the legitimacy of Zhongshan’s supplier, and increases the possibility that Zhongshan kits were not properly stored or transported.	The restaurant mentioned above is located in a commercial complex. The agent has an office on the first floor of a commercial complex where the restaurant is also located. No link can be established between the Chinese restaurant and the presence of the office of the Indian agent in the same building.
NA	USD 150,000 plus Rs. 20,14,53,846	<i>Unexplained Reimbursable Expenses in NTPC’s Contract Award and Complaints as to Its Competency.</i> NTPC appeared to have received unwarranted payments in its award as a PSA. NTPC submitted, and NACO awarded, a contract to the company consisting of INR 68.2 million (USD 1.5 million) in lump-sum compensation, INR 133.3 million (almost USD 3 million) in reimbursable expenses incurred locally, and a “foreign ceiling” of USD 150,000. However, NTPC’s bid submission had already accounted for reimbursable expenses, so the reimbursable expenses awarded by NACO—which amounted to more than double the contract’s value—appeared to be an additional sum over and above the contract award amount.	Not correct. A pre-award checklist and draft contract for the no-objection of the Bank for the engagement of NTPC as a procurement agent was submitted on 15 <sup>th</sup> September 1999. The contract amounts specified was USD 150,000 towards foreign travel as reimbursable expenses, Rs. 68,187,846 as lump sum expenses for setting up the office and Rs. 133,266,000 for sundry expenditure. The Bank vide its letter dated 18 <sup>th</sup> September 1999 indicated their no-objection to the proposal as stated above. Payments were made strictly in accordance with the contract.
NA	NA	<i>Award of Local Contracts to HLL While Serving as PSA.</i> On	As there was only one and a half years for the closure of

		<p>September 30, 2005, NACO contracted with HLL to replace NTPC as PSA until March 30, 2006, the closing date of the NACP II. NACO's selection of HLL raises questions, since HLL had already been a supplier of goods under the NACP II and since the Bank had already expressed reservations with the selection of HLL as a PSA. The Bank had previously asserted that serving as both a procurement agent and a supplier of goods for the project would amount to a conflict of interest, in violation of Bank guidelines for selecting consultants. Moreover, the Bank had previously recommended terminating HLL in the RCH and Rajasthan Health Systems Development Projects after an independent assessment found serious deficiencies in the capacity of HLL to perform as a PSA.</p> <p>Nonetheless, based on local procurement information provided by three different SACS (Maharashtra, Karnataka, and Orissa), the DIR determined that HLL won 10 contracts procured locally by the SACS while it was serving as the PSA on NACP II, nine of which were awarded before the project closing date of March 30, 2006.</p> <p>Thus, the DIR noted issues related to the selection of PSAs under the NACP II that merit further attention.</p>	<p>NACP II was available, identification of a new procurement agent through QCBC was not possible. Accordingly on September 23<sup>rd</sup> 2005 Government proposed to appoint HLL as a PSA which was concurred to by the Bank vide its letter dated the 18<sup>th</sup> October 2005, based on the fact that HLL had taken several steps to address deficiencies identified in the DFID assessment study.</p> <p>World Bank concurrence was given at the same time when the issues related to the Rajasthan Health System Project were taken up. It is presumed that the Bank was fully aware of the issues involved. Hence the question of HLL recusing itself from any procurement at the SACS level does not arise</p>
IFB - 15	Euro 180431 & INR 3,61,55,155/-	<p><i>Avoidance of Prior-Review Thresholds (IFB-15)</i></p> <p>number of tenders procured by NTPC, the DIR observed what appeared to be split purchasing, which occurs</p>	<p>Proposal for multiple scheduling of test kits was mooted under IFB 15 for HIV (Elisa) kits from NACO by letters dated 30<sup>th</sup> July and 16<sup>th</sup> August 2001 to have eight schedules based on a regional</p>

		<p>when a quantity of goods and services are divided or not consolidated for the purpose of evading a threshold limit or competitive-bidding requirement. The DIR's analysis showed that the cumulative value of the separate schedules within six test kit packages procured by NTPC amounted to more than USD 300,000—the amount that triggers prior review by the Bank— and that one of these packages was valued at over USD 1 million. NTPC divided five of these packages into multiple contracts that were each valued at less than USD 300,000, and the Bank prior reviewed contracts from two of these packages.</p>	<p>zoning pattern. In order to accompany competition and attract more bidders who are able to comply with the post qualification requirement of having a demonstrated capacity to supply atleast 50% of the quantity being offered. Secondly splitting the quantities into various schedules was essential in order to facilitate domestic competitors to bid. World Bank accorded approval for the splitting up of the packages into multiple schedules for HIV kits vide letter dated 23<sup>rd</sup> August 2001. This letter was received from the Operations Advisor of the Bank and therefore it is not true that this proposal of splitting did not have the prior concurrence of the Bank.</p>
(IFB 24	USD 330699	<p><i>Unusual Pricing Patterns</i></p> <p><i>Unusual Correlation between Zhongshan's Bid Prices and the Cost Estimate.</i> The DIR observed a highly unusual pattern in the bid prices submitted by Zhongshan for IFB 24, under which it won four of the eight schedules. Except for Schedule I, Zhongshan's US dollar bid prices were numerically identical to the Indian rupee cost estimates divided by 100. Table 15 shows Zhongshan's bid price against the INR cost estimate.</p> <p>finding indicates possible fraud and corruption in the procurement process.</p>	<p>We do not agree with the observation. There is nothing unusual about the quotes of M/s Zhongshan which was successful in the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup> and 8<sup>th</sup> schedules. The bid security is 2% of the estimated cost price and as the bid security is clearly specified in the bid document, which is in the public domain, the cost estimate can be easily derived by back calculation. Moreover there seems to be an error in the Table 15 wherein the cost estimate in INR cannot be compared with the bid price in USD by applying a 10% formula.</p>
IFB 2/5 & 17/5	INR 90,21,900 &INR 88,17,900 inclusive of AMC	<p><i>Schedules Awarded to Remi.</i> (IFB 2-5 &amp; 17-5)</p> <p>There were two contracts awarded to Remi for the</p>	<p>In both the cases Remi was the L1 out of a field of 7 and 4 responsive bids respectively. As per Bank guidelines, even one successful bid has to be considered. Secondly, rejection</p>

		supply of 204 units (102 per contract) of blood-bank refrigerators. (IFB 2-5 and IFB 17-5). Both contracts won by Remi had low bid submission rates of approximately 30 percent, and high non-responsive rates of more than 50 percent, as indicated in Table 17. Again, such findings might merit further attention.	of bids without any valid grounds could also invite litigation.  Bank may take a fresh look at their guidelines for procurement of goods.
IFB 2A/3 & 25/3	<p>USD 228,900 + INR 500,00</p> <p>Euro 45,288 + INR 54,000</p> <p>Euro 10,136 + INR 64,000</p>	<p><i>Contract Awarded to Nuairé at Inflated Price (IFB 2A-3 &amp; 17/03, IFB 25/03</i></p> <p>By comparing the unit prices on a freezer contract awarded to Nuairé in 2000 to the unit prices on contracts awarded to other suppliers in 2002 and 2004, the DIR observed that Nuairé may have been awarded the contract in 2000 at an inflated price. Specifically, in 2000, NTPC awarded Nuairé a contract under IFB 2A-3 for 42 -40° C deep freezers at a unit price of INR 318,768 (USD 7,083); in 2002 and 2004 however, other suppliers were awarded contracts for significantly fewer -40° C freezers at unit prices 23 percent (in the case of the 2002 contract) and five percent (in the case of the 2004 contract) less than the unit price on Nuairé's contract. These lower prices were achieved despite inflation and despite the significantly lesser quantities procured, raising questions as to the competitiveness of the procurement for the contract won by Nuairé.</p>	<p>The bid of Nuairé was L5. In the subsequent bid there was greater competition and lower prices were obtained. Moreover negotiations with suppliers are not permitted as per Bank guidelines.</p> <p>The freezers were procured based on an ICB. 12 Bids were received. Of them only Nuairé, which was L5 was found to be technically and financially respective.</p> <p>In 2002 and 2004 the bidder who got the contract was L1 in both cases.</p> <p>Therefore, it is not correct to compare a L5 price with a L1. Secondly, NACO was procuring such equipment for the first time in 2000 and had no benchmarks to assess the estimate value of the equipment.</p>

**Comments of TB (RNTCP I)**  
**Ministry of Health**  
**to the observations and conclusions of the DIR report**

These comments have been prepared after an examination of the DIR Report and the documents related to the procurements mentioned in that Report. These are given in the following format

1. Brief note on Programme Performance
2. Response to the observations made in the report.
3. Actions taken under TCP II
4. A brief note on financial matters
5. Brief general comments on decentralized procurement

**1. Brief note on Programme Performance**

The RNTCP started in 1997. Apart from World Bank, the programme has other funding partners - DFID, DANIDA, GFATM and USAID. The entire country was covered under DOTS by March 2006. RNTCP has been recognized globally for fastest expansion of DOTS strategy anywhere in the world by the JMM 2003 and also in 2006.

Since its inception, the programme has initiated more than 8 million TB patients on treatment saving over 1.45 million additional lives.

India accounts for nearly 20% of global incidence and as per WHO Global report 2007, RNTCP contributed 24% of cases notified in 2005 globally. The treatment success of new infectious TB cases under RNTCP has consistently exceeded the global benchmark of 85% over the years, and global target of 70% case detection was achieved in 2007. Thus India is among very few countries achieving 85% cure rate and 70% detection. As against 60% of case detection rate globally, India achieved 66% case detection in 2005.

RNTCP is implementing the 2006 Global Strategy to Stop-TB and reaching the TB-related targets of the Millennium Development Goals (MDGs) by 2015. The programme is progressing towards achieving TB related MDGs. TB mortality in the country has reduced from over 5 lakh deaths per annum at the beginning of the programme to around 370,000 deaths per annum currently. As per WHO Global report 2007, deaths due to TB has declined from 42 per 100,000 population in 1990 to 29 per 100,000 population in 2005.

National estimates of ARTI prior to 2000 were 1.7 and estimates based on National ARTI survey in 2001-03 is 1.5. Repeat population surveys conducted by TRC, Chennai, indicate an annual decline in prevalence of disease by 12%. Thus the programme is well on its path to achieve the MGDs.

The RNTCP is cost effective programme. As per WHO report 2007, the cost of first line TB drugs is US\$ 16 per patient treated, as against the median cost for other high burden countries – US \$ 26 per patient.

The RNTCP has implemented many new initiatives and forged innovations.

1. Recognized for its innovation of provision of TB drugs in Patient-wise boxes
2. Quality of Sputum microscopy is ensured through EQA and Quality of drugs ensured through testing of drugs by external agency
3. One of the best models for forging public private; public-public partnership; and partnership with the corporate sector. The RNTCP is one of the few DOTS programmes in the world to have official prescribed guidelines for the involvement of NGOs and private practitioners.
4. Robust Surveillance Mechanism with Electronic reporting by all districts, & Quarterly Reports and Annual Report published & placed in public domain on RNTCP official website

5. TB/HIV collaborative activities - TB/HIV coordination activities implemented jointly by the RNTCP and NACP have been scaled up to cover entire country.

**External Evaluations:** The program was reviewed in 2000, 2003 and 2006 by external monitoring missions. The missions each time had more than 20 international experts who visited the field all over India and had done detailed review of the RNTCP activities. All these missions have noted that RNTCP has achieved fastest expansion of population coverage under DOTS and has effective drugs logistic management system with making available quality assured drugs through out the country. Case detection rate continues to be above the global average, with high levels of treatment success. External quality assessment (EQA) has been implemented in the microscopy network. There is excellent system of recording and reporting with indicators for monitoring.

At the same time the programme has a system of **Internal Evaluation**. Every quarter two districts are evaluated in the state. For the Central level, one state is evaluated every month which include the review of two districts and review of the state performance.

## **2. Response to the observations made in the report.**

### **2.1 General observations**

The TCP was included in the DIR because certain suppliers found to have colluded in connection with the Reproductive and Child Health Project (RCH) also competed for contracts under the TCP. Accordingly, as stated in the Report, the DIR focused a large portion of its review on those contracts. Therefore, perhaps it had little concern for programmatic indicators or appreciation of the efforts and difficulties of the project and its achievements.

**However, there are very selective quotes from various supervision reports, which could lead to criticism of the project which may not be warranted.** Brief comments given below would establish this. All this could and should have been avoided.

The Report notes that, at the TCPs initiation, the Bank had identified several risks, “including that implementing agencies would be unable to ‘provide’ the leadership and services required to ensure proper implementation of the programme, and supply of drugs would be ‘uneven’ given the ‘spotty record of drug deliveries’ and the potential ‘misuse’ of large quantities of drugs”. However, **the fact that these risks proved to be misplaced, which is also confirmed by the very detailed investigations of this team, has not been mentioned or acknowledged in the report.**

The DIR report quotes from the ICR that the project had exhibited savings because of “substantial overestimation in the original cost estimates and subsequent **unexpected** declines in the prices of important items including drugs and microscopes”. But the decline in prices of drugs and microscopes has not been analyzed. Our calculations suggest that the cost of drugs for treatment of each patient is substantially lower than the cost of drugs procured by GDF for other countries as well as for India. Could it also be because of the generation of good competition through a generally transparent procurement system? Although the DIR ‘looked for indicators of price inflation by examining prices paid by the TCP and comparing these prices with prices published in the International Drug Price Indicator Guide’ no details have been provided in the Report.

Admittedly, there were start up problems with the project. The Bank had then suggested in February, 1998 to appoint a procurement agent on competitive basis. The DIR then quotes from ICR of June 2006, “that MOHFW moved slowly in the competitive selection of a procurement agent”. **But it has not analyzed this process at all while the comment would seek to convey the message that the Ministry was dragging its feet**, which is not correct. The selection of the procurement agent had to be done through QCBS process under ICB, which is a lengthy process partly because it requires approval of World Bank at every step. Though the process of selection of the procurement agency was started in May, 1998, however, final contract could be signed only in January, 2000. The main reason for the delay was failure to get any agency which fulfilled the requirements given in the TOR advised by the World Bank. These TORs were subsequently revised and approved by the World Bank in June 1999. Valuable time was thus lost due to the new TOR suggested by the World Bank, which proved to be unworkable. The Ministry had to start the process again in June, 1999. The procedures which includes technical evaluation and its approval by World Bank, Financial bid evaluation and selection of agency, its approval by the World Bank, Development of draft contract agreement in consultation with selected agency and its approval from the World Bank and finally signing the

contract were completed in 7 months i.e. by January 2000. A perusal of the file would also clearly show that the ministry was repeatedly stressing the need for urgency. **This is also a commentary on the delays inherent in the standard procedures set out by the Bank. Therefore, quoting this delay independently of any analysis or examination may not bring out an adequate appreciation of the situation.**

While the report does not talk much about timely or otherwise supplies of drugs after the initial delay at the start it nevertheless quotes the concern for significant delays in the procurement of drugs and microscopes as late as end 2004. However, this problem has not been analysed. The delay in the procurement of anti-TB drugs was because these procurements were as per ICB and required approval of World Bank at each step starting from the stage of technical specification of products, approval of bid documents, publication in UNDB journal to the final stage of approval, pre-bid conference and approval of its minutes, technical evaluation of bids and its approval and final approval of recommended bidder before awarding the contract. In 2002-03 the delay was because of introduction of a two stage bid system by the World Bank after 6 months of starting of the process of procurement. The pre-qualification process for two stage bid was started in April 2002 which could not get the desired competition as out of the 17 applicants 12 could not qualify as per various stipulations of the bid document insisted on by World Bank.<sup>1</sup> Later this whole process was annulled and agreed to by the World Bank in February 2003 and one stage bid process was restarted in March 2003, after approval of bid document by World Bank. Further delay was caused by a court case by Nestor against its deregistration for Pyrazinamide. The whole process could be completed by December, 2003. Thus the delay in procurement was due to new procedure introduced by the World Bank, and also due to the court case. **Both these conditions were beyond the control of the borrower.**

Similarly, the delay in 2004 procurement was because of court cases from Nestor and Pure Pharma, in addition to the completion of all processes indicated above. **Thus the delay could have been understood and explained in context, if at all it was relevant to the Report.**

The report goes on to note from ICR of June 2006, that, after extending the project closing date beyond September, 2005, a further mission which was conducted later in 2005 identified the issues to be addressed relating to internal control mechanisms. (These issues are generally always to be addressed so this is nothing very new). But in spite of this, the writer emphasizes that the ISR (November, 20th 2005) “**nevertheless**” defended the recently given rating of “highly satisfactory” which it had justified given that “compared to other national public health programmes in India, this programme is exceptionally well organized and managed”.

The reason why this is being mentioned is that the DIR, inadvertently or otherwise, appears to be going out its way to create impressions of problems and neglect and repeatedly seeks to question good ratings for the project. There does not appear to be any rationale for these observations made without analysis and context. This was also certainly not the objective of the investigation.

## **2.2 General conclusions of the DIR**

DIR also examined all the important issues of the TCP related to procurement and distribution. It may be useful to catalogue their findings:

- i. The DIR did not identify indicators that TCP suppliers provided inadequate or poor quality pharmaceuticals. Nor did the DIR discover indicators that prices were inflated.
- ii. DIR did not observe any significant deviations between the quantities of pharmaceuticals specified in the contracts and quantity actually delivered (since there is no report of deviations at all, the word ‘significant’ is inappropriate and deceptive).
- iii. DIR observed that adequate records were generally maintained and reflected the proper receipt and dispatch of stock to the intended delivery points.
- iv. DIR generally found comprehensive patient registers and patient cards showing drugs actually being delivered to end users as intended.

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<sup>1</sup> [(a). Minimum no. of similar contracts to be five in the preceding five years to be adjudged by value. (b). Actual annual production expressed in terms of tablets ,capsules and vials to be exhibited by contracts executed must be two times the quantities arrived under each product code for at least two years during the last five years. (c). The average annual sales for five years as stipulated works out to two times the estimated cost of the product code.]

- v. DIR obtained drug samples relating to contracts issued under the 2002 and 2004 tenders and commissioned SGS, Netherland B.V (SGS) to conduct independent laboratory testing of the collected samples. The DIR selected the samples from shelves in State and district stores and from bulk storage at the GMSD in Mumbai. **All those samples complied with the applicable contractual specifications.**
- vi. DIR did not identify any indicators of fraud or corruption in connection with the procurement processes relating to the equipment.
- vii. The DIR did not identify any indicators calling into question the quantity or quality of equipments supplied under the TCP contracts under review. The DIR traced the delivery of microscopes to the user level (Microscopy centre). Based on examination of the equipment and discussions with the end users, the DIR found the equipment fit for its intended purpose.
- viii. The DIR also found that LCD projectors were delivered as stated on the revised consignee list and were meeting user requirements.

### **2.3 Complaints management**

Let us look at the complaints management which is a separate section of the report. First, the complaints were few. Second, the DIR observes that all complaints were addressed adequately, and more importantly, they did not lead to any change in any decision. This is further evidence of both a transparent procurement process and the correctness of the decision making. Should such a conclusion not have been reached?

**The above categorical findings should clearly establish that the project was being implemented in a very satisfactory manner even as far as procurement, deliveries, logistics, quality assurance, records are concerned. Yet the perception from the report would be that there were significant indicators of fraud and corruption.**

### **2.4 DIR examination of tenders over different years**

In the light of the clearly stated objective of the investigation of the TCP to find out the role of the two companies involved in the RCH project, it appears that the entire analysis of all the tenders between 1999 and 2004 was only to establish a so called collusion between these two Companies. Nothing else related to those tenders has been discussed.

There is little analysis of what prices were quoted by other companies, the number of bidders for different products codes for each year, the awards given to different companies in different years and the fact that even though there may have been indicators of collusion between these two Companies, contracts were not given to them. In fact the DIR concludes that these companies would have succeeded in cornering large number of contracts, in different years had the Government not de-registered them. It is noted but ignored that this was consciously decided by the Ministry in several tenders because of the issue of low quality of drugs supplied by these two companies from time to time. Therefore, the credit for taking action against these Companies has not been given to the Government, but exposition has been made over several observations of the indicators of collusion between these two Companies based on which a perception has been created that there was large scale fraud or corruption in the procurement of drugs for the TCP.

### **2.5 Comments on each year's procurement under TCP would be in order:**

- i. In 1999, 21 companies bid for different product codes although the number of Companies bidding for a particular product code varied from code to code. The DIR states that Nestor and Pure Pharma were less than 1% apart in 7 of the 11 bids for which they both bid and their prices differed dramatically from prices offered by other bidders. Their quantitative bids also suggested attempts to split the contract between themselves. It concludes that had Nestor and Pure Pharma collectively outbid other bidders the award could have been split between the two companies evenly. It may be noted that dramatic differences in prices of other bidders were there both on the higher as well as lower sides. A much larger value of the orders were given to other companies. The Bank also agreed to these recommendations. Nestor bid for 11 contracts but got only two and Pure bid for 12 contracts and got only one contract. It is to be noted that very small differences of prices across the different codes were also to be seen in the bids of another company along with Pure Pharma and Nestor.

To conclude, therefore, that there was indication of fraud in this process would be both misleading and false. This was also the first year of ICB process. When this tender was evaluated in 1999-2000, and when Pure was deregistered for many items, could there be a perception of collusion?

- ii. In 2000, the DIR has reported that lack of documentation prevented them from examining the bid evaluation prices because many Companies, including Novartis who were lowest bidder for some items were excluded. The BEC report submitted to the DIR, which was approved by the Bank stated the reasons because of which different companies were declared non-responsive but this has not been taken into consideration. Presuming these reasons to be truly stated, the DIR should have commented on their acceptability or otherwise. There were 13 product codes of which Pure Pharma submitted bids on 10 and Nestor submitted on 7. Once again there was similarity of prices in the common bids. 4 companies were awarded the contract. Nestor could get only contract for 5 PC's and Pure Pharma got no contract. Pure was deregistered, and was also non responsive in not fulfilling the clause 7.5.9 of bid document. Its prices were not even considered. Novartis did appeal against declaring it non responsive. However, as mentioned in DIR report at page 592, Novartis acknowledged in its letter that 'due to an oversight certain document were not submitted' with its bid. The record do not show any complaints made by any of the other bidders. The Bank also agreed to these recommendations. When this tender was considered in 2000-01 could there be a perception of collusion?
- iii. For 2001, the DIR concludes that they did not find any indicators of collusion in connection with this tender. One has to wonder, therefore, as to why there was no collusion between the two companies in this tender when both submitted their bids.

DIR also notes that BEC from the procurement agency recommended Nestor as qualified for some of the bids but the Ministry of Health had informed MECON, the procurement agency that since Nestor had been deregistered for Pyrazinamide 750mg, their bids cannot be included to award contract. DIR team asked why Nestor was recommended by BEC when it was de-registered? BEC evaluated the bids from 13th July -17th July 2001, and submitted the report for the consideration of PAC which was held on 24th August 2001. Nestor was deregistered by MSO for Pyrazinamide only on 13th August 2001. PAC directed MECON to go for post qualification of second lowest bidder to ensure the quality of drugs. MECON later submitted the post qualification of the second lowest bidder which was considered and awarded the contract. This point was repeated by DIR team during discussion. The above chronology provides a simple explanation. If only clarification had been taken earlier, this would not have found mention in the report.

On the basis of the above brief picture of the first 3 years of the procurement process, it would be fair to say that there could not have been a pattern of collusion up-to this stage or would not have been easily detectable, even if so. Besides, when a company is deregistered, comparative prices are not expected to be examined so closely. The latter issue was applicable in subsequent contracts too.

- iv. For 2002, the DIR concludes that both Nestor and Pure Pharma did show evidence of collusive practices in their bidding. It is also noted that Nestor could win only 2 contracts out of the 14 for which they applied for and Pure Pharma did not win any contract for any product because they were excluded on account of their deregistration. DIR has not noted that these companies were evaluated for their bids as per the order of the High Court of Delhi directing that their bids be considered. However, the PAC considered the matter and noted that notwithstanding the outcome of the act of deregistration, failure of their sample is a fact on the basis of which their supply cannot be said to be satisfactory, and in spite of Nestor being the lowest, they were not awarded the contract. To conclude, therefore, that had they not been deregistered they would have been awarded the contract is incorrect.
- v. For 2004, DIR notes that the two companies were deregistered but were still pre-qualified. The evaluation committee for the pre-qualification of bidders recommended Nestor Pharmaceuticals as pre-qualified even for the lots containing Tablet Pyrazinamide (for which the applicants stood deregistered and final decision of the High Court on their petition against deregistration was pending) considering the fact that by the time the financial bids are submitted i.e. November,2004, their deregistration would be over. TEC also recommended prequalification of Pure Pharma for the supply of the product codes containing INH in the context of order from Madhya Pradesh High Court staying deregistration of the firm. Bank did not issue NOC to Nestor but it issued NOC to Pure Pharma. Nestor submitted

their financial bids even for those products for which they were not declared pre qualified by the World Bank (PC containing Pyrazinamide) along with financial bids for the product codes for which they were pre-qualified and filed a petition in the High Court of Delhi for a suitable order not to reject their bid on the ground of de-registration. The High Court of Delhi issued an interim order on 19th November, 2004 directing that, "In the meanwhile, the bid submitted by the petitioner shall not be rejected". Based on this TEC evaluated the bids and made recommendations, with and without Nestor for the lots which contained Pyrazinamide. The PAC discussed the BER in view of the orders of High Courts of Delhi and M.P. The Committee noted that the period of de-registration of Nestor was over on the date of opening of price bids and the difference of price quoted by the next high bidders if Nestor and Pure Pharma are not considered would be Rs 12.5 cr or US \$ 2.8 million. In the light of the orders of the High Court PAC, had little option but to recommend purchase from the lowest bidder. However, on the refusal of World Bank to issue NOC to the PAC recommendations, the matter was placed before Committee of Secretaries in June, 2005 and finally the tender was cancelled, and the same was approved by the World Bank.

It would be evident, therefore that the bids of these companies had to be considered as per judicial directions under the law of the land. In one case, even though lowest, they were not awarded contracts. In the other, where the difference in costs was very large, the order was still cancelled on the objection of the Bank and was considered at the highest level of Government. Pure Pharma was not considered by PAC due to failure of samples of INH at CDL Kolkata though its deregistration was stayed by MP High Court. How can this be implied to be indicative of fraud and corruption because of collusive pricing in bids by Nestor and Pure?

The above analysis provides a true picture which has not at all been examined by DIR. It is acknowledged that with the benefit of hindsight and simultaneous examination of several years of contracts one can detect that the bids submitted by these two companies definitely indicated collusive practices. However, the Ministry consciously examined issues related to the quality of supply of these two companies which led to most of the contracts not been given to either of these two companies. Therefore, the issue of these two companies being the lowest or in collusion did not impact the awards of contracts. The DIR does not appear to have examined in detail the analysis made in different tenders which led to their exclusion.

**2.6** This analysis throws up a very important issue which is of critical importance and which has not been addressed but now needs to be. What should be done in such cases? The records will indicate at each time there were sufficient number of bidders for different product codes. If two companies together seek to offer lowest prices then under what rule or procedure should that be denied? Or what should be the alternative to prevent such collusive practices? Each of the companies could also have individually bid and won the contracts. If certain indicators like these are detected in any contract then how should one proceed? Should the companies be debarred if they have been in apparent collusion and quoted lowest prices? Should purchases be made at possibly much higher prices quoted by others? Would this matter be justiceable and the companies go to Court? What would happen to the need for drugs for the programme if these situations would then cause interminable delays? Can such companies be debarred in future contracts? Could there be clauses which can be put into bidding documents to prevent such practices leading to disqualification? As the above analysis shows, such issues arose during these 5 years creating many difficulties for those implementing the programme. While the DIR does mention that it has pointed out these indicators being present so that such collusive practices may provide valuable lessons to Bank staff and Government to prevent such attempts in future, no analysis is made and no guidance is offered. We would strongly suggest that the Bank frame immediate guidelines in this regard which would then be suitably incorporated in the bidding documents. This need to be carefully worded and properly defined so that the bid evaluation committees can easily review on those lines and in case collusion is found can recommend debarring of such Firms.

### **3. Action Taken for Procurements under TCP II**

**3.1** The procurements under RNTCP Phase II are being done as per the PIP and Project Appraisal Document (PAD) agreed with the World Bank. Based on this a Procurement Manual has been prepared and got approved from the Bank. All procurements at the central level are being done through ICB, utilizing the services of a UN procurement agency (UNOPS) as agreed, wherein approval of the World Bank is taken at each step starting from development of technical specifications to the award of the contract. While it is evident that there is considerable delay inbuilt in

World Bank procedures, this has now been further complicated because all approvals are now being given by the Washington office of WB and queries are exchanged back and forth. Some reform of this procedure is required. The Empowered Procurement Wing (EPW) of MOHFW along with the support of Crown Agents are supervising, monitoring and providing necessary guidance for the central level procurements. For Quality Assurance of Anti TB Drugs being procured, an independent laboratory has been selected at the national level and it is testing the drugs at GMSD/SDS/DTC every quarter. The test reports sent by this laboratory are being examined by a Committee under the chairmanship of Drug Controller General of India (DCGI).

### **3.2 GAAP (Governance and Accountability Action Plan)**

The procurement in TCP-II is monitored by implementing activities agreed under GAAP. At the end of every quarter, a report on the status of actions taken during the quarter under the Governance and Accountability Action Plan (GAAP) is compiled and sent to EPW & the World Bank. Post procurement review is also done by the SGS, Netherland an independent consultant appointed by the World Bank. Some important activities under GAAP which are implemented are as:-

- Ensuring 100% post certification of all successful bidders recommended for award of the contract on the basis of existing WHO GMP certificates.
- Involvement of Independent Experts in Bid Evaluation Process.
- Monitoring of Central procurement is being monitored by EPW and World Bank through consultant, SGS, Netherland B.V. and by EPW regularly.
- Disclosing Information on website related to procurement plan, bid document and minutes of pre-bid conference.

**3.3** To make decentralized procurement at state and district level more transparent and free from any malpractices a number of steps have been taken in RNTCP II, which are as under:

- i. Preparation of Procurement Manual with the approval of World Bank and circulation to all the states and uploading it on the website of RNTCP.
- ii. Procurement training module developed and being used for training at national and state level.
- iii. Letters from Joint Secretary, MOHFW and DDG (TB) have been issued to all the states asking them to comply with the RNTCP procurement guidelines. An abbreviated version of RNTCP procurement guidelines has also been issued to all the STOs & DTOs.
- iv. Capacity building workshops for state level officials of almost all the states in the country have been organized by CTD from August, 2007 to December, 2007. After training these state level officials are conducting training for district level officials in their respective states.
- v. Information about list of contracts issued under TB II funding at state and district levels is being obtained within 15 days of close of every quarter through separate email ID created at CTD.
- vi. Regular visits to various states by CTD officials are being done to monitor the procurement capacity of the states. So far Delhi, Orissa, Jharkhand, MP & Karnataka have been visited. CTD has also started a post procurement review of the states along with Internal Evaluation.
- vii. Post Procurement Reviews of all contracts is being done every quarter by an independent consultant (SGS Netherland B.V.) appointed by the World Bank. So far two such reviews have been conducted in seven states and the consultant is conducting post procurement review in four states in February, 2008. The Central TB Division (CTD) is monitoring the reports of such reviews and asks for action taken on these reports from the concerned states. The action taken by the states on these review reports is also being informed to the EPW & World Bank.
- viii. Financial guidelines and training modules developed and states financial persons have been trained.
- ix. Procurement audit is also a part of Annual audit of district and state society.

#### 4. Financial Issues

**4.1** The DIR observes that the World Bank has not addressed the deficiencies and short comings noticed in the various Audit Reports. The DIR had examined 116 Audit Reports pertaining to the years 2002 – 2005 and had pointed out certain deficiencies/shortcomings numbering 8, which were common to some of the States. The deficiencies in relation to the number of Audit Reports examined comes to only 6.89 percent. Similarly, the SOE Financial Reviews also pointed out certain internal control weaknesses. While some of the deficiencies in the Audit Reports related to lack of reconciliations and tracking of outstanding advances, non-verification of fixed assets, etc., the observations on SOE Financial Reviews related to inadequate handling of cash and fraudulent withdrawal, claiming of advances as expenditure, etc. Action taken on the above observations on Audit Reports and SOEs was properly monitored by CTD and ensured corrective action is taken by the concerned States, the results of which were getting reflected in the subsequent Audit Reports in which these deficiencies/shortcomings were not finding place. The World Bank also used to address these issues by bringing them to the notice of CTD. Reports on the corrective/remedial action taken on such issues have also been forwarded to the World Bank.

**4.2** Some of the specific deficiencies/shortcomings noted by DIR on which corrective/remedial measures were taken are:

- a. **Improper use of fixed assets in the State TB Society, Himachal Pradesh** – The discrepancy related to the vehicle provided by the project not being used for the project work but by the Deputy Commissioner. The vehicle has since been returned by the Deputy Commissioner to the District TB Officer and has been handed over to the MOTC, Paunta.
- b. **Embezzlement of Rs.10.00 Lakhs in the State TB Society, Kerala** – The Bank with which the RNTCP Account was being maintained had released Rs.10.00 Lakhs against forged cheques from the said account. The Bank has since credited the amount to the RNTCP account.
- c. **Embezzlement of Rs.1.12 Lakhs in the District TB Control Society, Nalbari, Assam** – The Bank with which the RNTCP Account was being maintained had released Rs.1.12 Lakhs against forged cheque from the said account. The Bank has since credited the amount to the RNTCP account.
- d. **Lack of reconciliation between SOE & Audited expenditures** – All the States were advised to avoid/minimize such discrepancies and to invariably prepare reconciliation statement while finalizing the annual accounts. This is being done now.

Had the deficiencies/shortcomings as pointed out in the DIR been discussed with CTD perhaps the same would not have found inference in the final DIR.

The DIR also mentions that the ICR did not refer at all to any of the procurement problems and other issues noted in the various audit reports. It is stated here that as already pointed out above these problems and issues were actually addressed by taking up with the various States and getting corrective/remedial action taken, and having found them satisfactory, there was perhaps no need for making a reference about them in the ICR.

In order to address the internal control weaknesses and other deficiencies/shortcomings that were noticed in the TB-1 Project, a comprehensive Financial Management Guidelines has been prepared and got approved by World Bank for RNTCP-II, which includes provision for auditing of Central expenditure by C&AG and auditing of State TB Society expenditure by C&AG empanelled auditors with appropriate terms of reference to them, internal evaluation, internal auditing and financial management check lists etc.

**4.3** The following further steps have been taken during RNTCP-II to strengthen the internal control aspects. Many of these are emphasis on actions which had regularly been taken.

- Financial review of State and District Society accounts has been made an integral part of the internal evaluation system.
- A training module has been developed to train the State and District Accountants on a regular/periodic basis.
- Finance personnel of State Societies are being trained at CTD.
- All the District Accountants are being trained at the State Headquarters.

- The States/Districts are required to furnish financial management check list on a quarterly basis.
- New recruits joining as Accountants at State Headquarters are given a 3 days training at the CTD so that he becomes conversant with all the financial aspects. Similarly new recruits at the District level are given training at the State Headquarters.
- STOs were also trained specially in Financial Management. This Module is incorporated in the initial 12 days training of the District Officers.

## **5. Decentralized Procurement**

- 5.1** It is almost self-evident that detailed examination of procurements at state and district level with their huge number in India is not feasible. Although, the impression from the Report would be that this was not done. The DIR team in brief discussions with the Ministry Officials in Feb 2008 agreed that at best this can be randomly done. This had already been incorporated in TCP II by providing for random post-procurement audits, whose findings are shared with all units. All states and districts are made repeatedly aware of the procurement guidelines of the bank and trainings are also held.
- 5.2** More importantly, however, there are evident difficulties in implementing World Bank procurement guidelines at these levels which have never been considered although these issues were raised from time to time. The most important item for procurement is lab consumables. There is great difficulty in making this procurement at local levels. Therefore, over the years, it was often suggested whether rate contracts could be done at national or state level but these were never permitted. It is only now that the Bank appears willing to reconsider this matter. Another important item is the printing of registers, referral forms, patient cards, IEC material, reporting forms etc. Once again there are many problems in World Bank guidelines. Other methods are available including printing from District Press. Perhaps it would have been more appropriate if existing State procedures are also permitted. Bank needs to examine these issues. Rest of these problems noted could then be avoided. .
- 5.3** The DIR team in our discussion with them in Feb. 2008 stated that decentralized procurement constituted a very high percentage in total value items and we were told that 50% of TCP II is accounted for in this manner. This assessment is incorrect since the procurement items have not been analyzed. These include contractual services, minor civil works, vehicle hiring, laboratory consumables etc. 26.30% of the value relates to salaries of contractual staff, 3.12 % is for printing, 5.95% is for lab consumables and 3.51% relates to hiring of vehicles, etc. Thus, the actual amount for decentralized procurement is very low and the major items involved have already been explained above. This is another example of how unverified statements or assumptions tend to distort conclusions.

## **ORISSA HEALTH SYSTEMS DEVELOPMENT PROJECT (OHSDP)**

### **Issues raised in the Detailed Implementation Review (DIR) and interim response of the Government of Orissa**

The major components of OHSDP involved civil works at **156** different health institutions including community health centres and sub divisional and districts hospitals and supply/installation of **404 types** of equipments, instruments and furniture (EIF). The project was closed on March 31, 2006

### **Main issues raised by the DIR**

#### **1) Quality issues:**

- 54 of the 55 hospitals (Project total = 156) visited had construction problems Out of these in 10 cases there were serious deficiencies
- 4 hospitals (project total = 155) were not used
- 17 types of equipments (out of total 404 types under the project) were non compliant with technical specifications
- 5 types of equipments could be potentially hazardous and did not have necessary test certificates. They needed further evaluation and testing.

#### **2) Indicators of bid rigging, fraud and corruption**

- Procurement of design consultants /construction management consultant exhibited bid rigging.

- Lack of certification in cases of equipments indicated fraud and corruption.
- Competition for tenders was low.
- Low price bids were frequently found to be non-responsive.
- Contract prices often exceeded the estimated cost.
- Equipment was not properly installed.
- Lack of personnel to operate provided equipments.

### 3) Audit certification for 2005-06

- There is an Audit certification and report still pending for expenditure made during 2005-06.

#### Limitations and infirmities of the DIR

- The observations made in the DIR were not discussed with the Government of Orissa or the project authorities (Project was already closed). As a result, several factual errors and misinterpretations found in the DIR could not be clarified.
- The project has made many achievements in respect of upgrading health institutions in remote parts of the State of Orissa. However, the DIR does not make any mention of these achievements.
- In some cases of civil works, the photographic evidence shown in the DIR does not relate to the civil works undertaken under the OHSDP but relates to some other previous constructions in the hospitals.
- The procurement of design consultants /construction management consultants was made through a transparent process and was duly approved by the World Bank.
- The procurements were made following World Bank's guidelines.
- As regards 17 types of equipments which have been mentioned as non-compliant and lacking test certificates, it is found that the documents showing their compliance to specifications as well as test certifications are actually available.
- In many cases shown as lowest bidders becoming non-responsive, the Construction Management Consultant (CMC) have evidence to show valid reasons.

#### Action Taken by the Government of Orissa (GoO) on the DIR

- The Vigilance Department of GoO, which has legal powers to investigate and prosecute under Prevention of Corruption Act has been given the responsibility to address all issues of fraud and corruption mentioned in the DIR. The Vigilance investigations have been initiated on 24.01.2008. The Vigilance authorities have already visited 154 sites.
- A **Joint Action Plan** agreed with the World bank with datelines (Table below) and action on all points has been initiated.

Address civil construction issues of hospitals on rolling	10 hospitals by March, 2008, 45 by September, 2008 and remaining 101 by March, 2009
Get samples tested and address deficiencies for 5 types potentially hazardous equipments	March 31,2008
Survey/census of all equipment to address concerns on deficiencies or lack of personnel	Survey by March 31,2008 Action plan by April 30,2008
Audit certification and report	As soon as possible. (Accountant General, Orissa is continuing the audit work has been requested to expedite)
Health sector systems strengthening	DFID financed plan supports capacity building, including monitoring and evaluation, procurement and financial management reforms in the health sector.

**Malaria Control Project -  
Detailed Response to DIR**

The Department of Institutional Integrity (INT), World Bank has carried out a detailed implementation review (DIR) of the five health sector projects including Malaria Control Project (MCP), implemented with the World Bank support from September 1997 to December 2005.

DIR has summarized its review with respect to MCP, as follows:

1. Widespread indicators of fraudulent and corrupt practices in the award of MCP contracts.
2. Indicators of fraudulent and corrupt practices affecting 73 % (by volume) and 50 % (by value) of the DIR reviewed contracts procured through decentralized procurement.
3. The World Bank’s project reports and assessments did not fully identify, convey or address the widespread indicators of collusion and fraud affecting the project.

The detailed comments of the programme division with regard to the DIR report relating to MCP are given in subsequent paragraphs. Broadly speaking, DIR report mentions **the deficiencies** in following areas:

- I. Procurement of Insecticides, namely, Synthetic Pyrethroids, and Competitive International Bidding**
- II. Procurement of Mosquito Bed-nets**
- III. Procurement of Pharmaceuticals**
- IV. RITES**
- V. Supply Chain**
- VI. Decentralized procurement (procurement at the State level)**
- VII. Complaints management**

**A detailed response, and summary related to items I and II above, is given below.** As far as procurement of pharmaceuticals is concerned, the issues that have been brought out in the DIR, which the Ministry was otherwise aware of are being addressed separately. The problems related to supply chain and decentralized procurement are also being separately addressed as already indicated in the Action Taken Notes. It is also to be noted that the proposed Malaria Project decentralized procurement has been kept out of the purview of the project because of the difficulties experienced. As far as the M/s RITES is concerned, they have given a very detailed reply to the observations made in the DIR which counters them. These are under examination and will be forwarded to the Bank separately later.

Each of the above items has been explained separately in subsequent paragraphs.

**I. PROCUREMENT OF INSECTICIDES  
(Synthetic Pyrethroids)**

**Observations of DIR regarding formation of cartel:**

DIR has examined following contracts of RITES:

<b>Year</b>	<b>Tender Reference</b>	<b>Type of Pyrethro</b>	<b>No. of schedu</b>	<b>No. of contr</b>	<b>Total amount of</b>
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					contract signed (US \$ million)
1999	RITES/MSM/MCP/02/1999	Powder	4	4	10.03
2000	RITES/MSM/MCP/08/2000	Powder	4	4	8.68
2001	RITES/MSM/MCP/04/2001	Powder	2	3	5.02
2002	RITES/MSM/MCP/04/2002	Powder	8	7	6.83
2004	RITES/MSM/MCP/03/2004	Powder	8	6	2.37
<b>Total</b>			<b>26</b>	<b>24</b>	<b>32.93</b>

DIR Report has identified that four (Aventis, Bayer, BASF, Zeneca/Syngenta – forming an apparent cartel) of the **seven suppliers of pyrethroids colluded in order to circumvent the competitive bidding process and win virtually all contracts at significantly higher price until the final tender, when the indicators vanished suddenly.**

Indicators of collusion included:

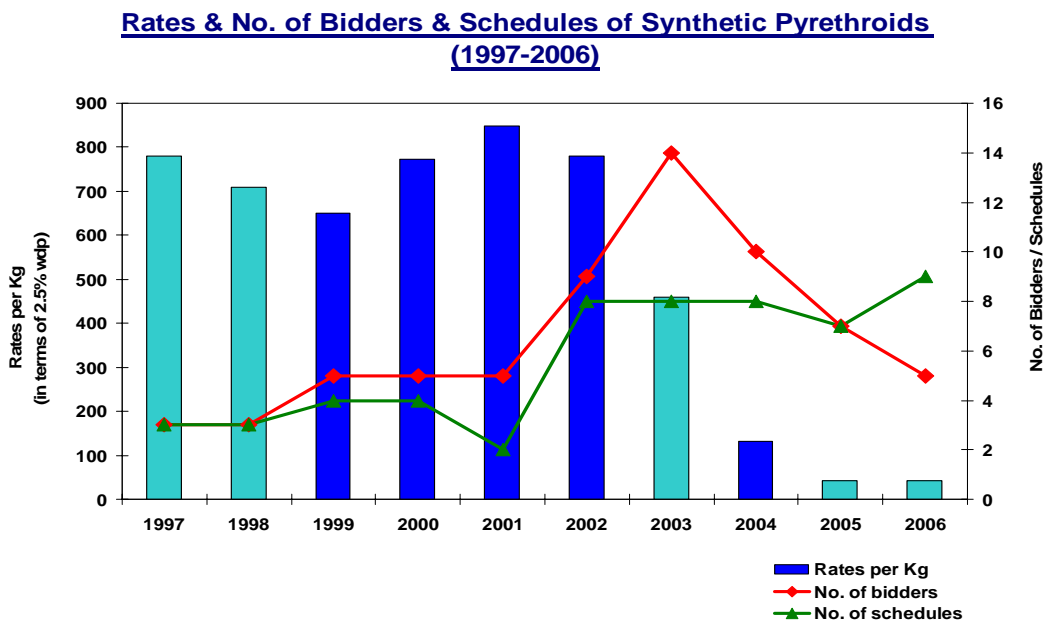
- the quotation of identical or unusually similar bid prices;
- the rotation of contracts awards within tenders;
- the splitting of contract awards between bidders;
- inflated prices;
- limited competition;
- Unusual patterns in complaints filed.

The DIR has reached the following conclusions:-

- A cartel of four multinational companies operated in the year 2000 – 2002.
- They were given most of the contracts under the World Bank assisted Malaria control project at a significantly higher prices
- The indicators of collusion amongst the cartel members suddenly vanished for reasons unknown in 2004.
- The UK Company, Agrofarm, was not awarded the contract because of alleged corrupt practice in the Central Insecticide Board under the Ministry of Agriculture.

### **Observations- Summary:**

*The detailed chart of the rates, number of bidders in the procurement of Synthetic Pyretheroid between 1997 and 2006 is given below. The light blue colour rate procured under the domestic budget. The chart makes the following things clear:-*



- 6) *Prices under domestic procurement were similar to the prices under the World Bank project.*
- 7) *These prices were assessed for their reasonableness in different years.*
- 8) *The DIR has not made any analysis of market prices, both domestic or international, operating at that time*
- 9) *The number of bidders has increased over a period of years. This is because of the following reasons :-*
  - a. *Registration of more manufacturers with the Central Insecticide Board which is the pre-condition for supply*
  - b. *Earlier rigid qualification criteria as per the World Bank guidelines which was relaxed by the Government later.*
  - c. *The World Bank itself mentions that there was no cartel in 1999. But cartel operated in 2000-2002. In 2001, the collusion was noted by RITES and Bid Evaluation Committee. Explanations were called from the bidders. Purchases were still made because of requirements of the programme. The matter was referred to department of INT by local World Bank office. But no response was received. Therefore, it is not correct to say that DIR has discovered this collusion. Further, qualification requirements were reduced by increasing the number of schedules from 2 to 8.*
  - d. *As a result of this, two Indian companies were able to compete for small quantity of contract in 2002. This has also resulted in marginal reduction of prices. Even their prices were relatively the same.*
- 10) *Under the domestic procurement of 2003 this process was carried further as more bidders were able to participate for greater quantities. Otherwise, the process reached its logical conclusion in 2004. Therefore, the collusion did not vanish suddenly in 2004 but was the logical culmination of actions taken by the Government from 2001.*

*The UK Company, Agrofarm was made technically responsive by the Ministry even against the recommendations of the BEC. This company could not provide the registration certificate as it did not fulfill the requirements of the CIB for purposes of registration. Ministry of Health made high level efforts for this purpose which came to naught.*

*The above would show that DIR while being able to examine many contracts simultaneously over the years did not examine all the contracts which provided a completely different picture. It has also not examined the World Bank provisions which lessened the competition nor appreciated the efforts by the Government to increase the same which resulted in lowering of prices. Allegations related to the UK Company is based on statement made by their Managing Director and his Indian agent. It would have been appropriate but also simultaneously take the views of the CIB. Even otherwise, this matter stands referred to the Ministry of Agriculture for examination.*

#### **Detailed observations:**

Synthetic Pyrethroids were introduced in the programme during 1997, with first procurement under the Domestic Budget component of NVBDCP (then NMEP). Introduction of Synthetic Pyrethroids was a technically important strategy under the new World Bank Project, with use of effective high value insecticides on a very selective basis in hard core, tribal predominant, malarious areas of the country.

Initially Deltamethrin 2.5% wdp was approved by CIB. Other two Synthetic Pyrethroids i.e. Cyfluthrin and Lambdacyhalothrin developed by different companies were registered by CIB after field trial on safety and cost effectiveness. All insecticides are introduced in the programme only after their registration with CIB as per Insecticide Act 1968. The INSECTICIDE ACT 1968 is an Act to regulate the import, sale, transport, distribution and use of Insecticides with a view to prevent risk to human or animals, and for matters connected therewith. It falls within the purview of Ministry of Agriculture.

The prices and the number of firms participating during the period of analysis are explained in the chart given in the summary above.

Under the World Bank assisted Malaria Control Project, Synthetic Pyrethroids (wdp) were procured 5 times, i.e. in 1999, 2000, 2001, 2002 and 2004. Procurement in 2003 was under Domestic Budget, as the World Bank had temporarily suspended support for this item on account of problems in CIB registration of one foreign bidder in 2002.

The purchases of Synthetic Pyrethroids (powder) over the years needs to be seen in perspective as well as context. In 1997 and 1998 there were only 3 bidders which increased to four over the next three years, 1999-2001.

As apparently only 3 manufacturers were registered with CIB in 1997, contracts were awarded to these three firms viz. M/s. AgroEvo India Ltd., M/s. Bayer India Ltd., and M/s. Zeneca Agro Chemicals Ltd. At the time of first purchase under MCP in 1997 the unit price was Rs.7,80,000/- per MT.

Reasonableness of the prices during the first procurement under the Domestic Budget (in 1997) was assessed based on the prices obtained through open competitive bidding and comparing the same with recent order placed by one of the states. Accordingly the price was negotiated with the bidders and orders placed at reduced prices on three suppliers. RITES has apparently assessed reasonableness of offered prices by comparing with the last purchase price.

In the year 1998, procurement was through DGS&D. Contracts were placed on three suppliers registered with CIB viz. M/s. Agro Evo India Ltd., M/s. Bayer India Ltd., and M/s. Zeneca Agro Chemicals Ltd.

The first procurement through RITES under the MCP was made in 1999. The ICB was a new procedure. M/s RITES was given turn-key authority. The tenders for 1999 to 2001 were awarded by RITES without any approval of the Ministry. Thereafter, approval of PAC was taken which was also approved by competent authority. In each case, the recommendations were approved by the World Bank. The Bank did not at any stage object to these recommendations or made any suggestions regarding evaluation of bids, except as indicated below.

In the year 1999, contracts were awarded to three suppliers (out of four bids received) based on competitive bidding. One of these suppliers (M/s Acco) was not registered with CIB at the time of bid evaluation. However, this bidder was considered for award on merits. The bidder got registration with CIB within the stipulated time allowed in the bidding document. The DIR also observes that M/s Acco significantly underbid M/s AgroEvo (part of cartel) and was awarded a contract. Thus question of cartelization, and support to such cartel, does not arise at this stage.

In the year 2000, contracts were awarded to four suppliers (registered with CIB) based on the competitive bidding process. As the number of suppliers was limited and there was no large variation in offered price as compared to the last purchase price, contracts were awarded by RITES. Apparent cartelization was not detectable at this stage by the evaluation process followed as the bid document approved by the World Bank.

**Bid Evaluation Committee for the 2001 tender had concluded operation of an apparent cartel** and sought explanation from each of the bidders. All of them denied having any price understanding, citing justification for their quoted prices. Apparently not satisfied with the reply, the Committee examined other facts of the case, like the trend of last purchase prices, supply orders placed by other States, requirement of this item for coming spray season and other options available for procurement of this item etc. Considering all the facts, the committee came to a conclusion that if bids are re-invited at this stage, excluding the four bidders, there may not be any other suppliers left based on the qualification criteria of the past experience of supplies made. A conscious decision was then taken by the BEC to award to three qualified bidders viz. BASF, Aventis and Bayer. But while awarding the contracts, they observed that such practices need to be discouraged.

It must also be noted, all the factual details regarding collusion were brought to the notice of World Bank. While according approval for the procurement, World Bank vide their letter dated 26.3.2002 made the following observations.

***“ Please note that the fact that two bidders who have quoted identical prices would be referred by us to the Bank’s “Department of Institutional Integrity” at our Headquarters, and if there were a confirmation of collusion, the Bank may not finance these contracts and in addition it would attract the provision of Clause 1.15 of the Bank’s Procurement Guidelines”.***

In view of above, it was presumed that necessary action in this regard was taken by Bank. The contracts were finally funded by World Bank implying thereby that the Bank’s Department of Institutional Integrity might have cleared these cases from collusion aspects. **The DIR does not refer to this matter at all, but discusses this very collusion in very great detail now.**

In order to break the cartel and to get more competitive bids, **the numbers of schedules were increased from two in 2001 to eight in the next tender for Synthetic Pyrethroids (WDP) in 2002.** It was noted that lack of competition was because small or new local manufacturers were unable to qualify because the stringent qualification criteria set by the World Bank in the bidding documents. By this modification in increasing number of schedules, competition was increased. As increase in number of schedules meant that for each schedule, a bidder with even lower past performance, in terms of quantities supplied, and would become eligible to participate. Moreover, it also opened up opportunities for newcomers to participate as the data would indicate that earlier this market was dominated mainly by multinational firms comprising of the above four firms. Another remedial measure was making approval of PAC mandatory before issue of contracts by RITES. These remedial measures have not been noted or acknowledged in the DIR.

The PAC approving the results of 2002 tender (a) maximized the quantity available to Meghmani upto their eligible quantity (b) approved eligible quantity for Gharda (c) overruled BEC recommendations and considered Agro Pharma technically responsive (d) noted that the increase of schedules has increased competition by bringing in new entrants and marginally reduced prices. Therefore, the break up of the cartel had been done by the 2002 tender which the DIR has perhaps been unable to perceive.

Procurement during 2003 was under Domestic Budget. Therefore, DIR has not examined this tender. A total of 14 bids had been received for procurement of 465 MT Synthetic Pyrethroids (wdp). This included bids from the cartel members viz Bayer, BASF and Zeneca. Contracts were awarded to two suppliers (Bayer and Gharda) at much reduced rate, as may be seen from chart at page 9. Thus apparent cartel had been broken.

This process was completed in next tender of 2004 because the quantities available to other players were now much larger.

The DIR conclusion of collusion vanishing in 2004 is, therefore, not correct. The possible reasons adduced for this sudden change, therefore, are also not convincing because this is a logical result of actions taken on the basis of 2001 tender in the years 2002-2004.

Further, during initial years of procurement the local manufacturers were in the process of getting the necessary registration of their product under the Insecticides Act and did not have requisite qualification in accordance to the post qualification criteria fixed as per the standard bidding document of the World Bank with World Bank’s approval.

As explained above, the efforts over a period of time had resulted in participation of firms/suppliers other than the so-called “cartel”. Noticeably, they were Indian firms and they were also able to bring down the prices of Synthetic Pyrethroids.

DIR observes that the “cartel of four” was operating a very high price of Synthetic Pyrethroids. But an analysis of the price trend of this item would reveal that prices started declining from 2002 itself while they were roughly at that level before 1999 too. DIR does not examine the significantly higher price of all these years, except to compare them with the subsequent lower prices, for which reasons were clearly different. It appears that prices charged were as estimated under the project. Even the BEC noted that prices were not inflated when it decided on the 2001 tender. Even in the 2002 tender prices of Indian manufacturers were not significantly lesser as they became later. The DIR should have been aware of the revolutionary price reductions now globally acknowledged as Indian manufacturers have come of age – AIDS drugs, TB drugs, Insulin, Vaccines , etc. There have been significant drops. But benefits naturally have only been prospective.

Reference is also invited here to remarks of DIR vide footnote no. 67 on page 435 of the DIR Report, wherein DIR has observed as follows “...despite frequently being the lowest evaluated bidders, between 2000 and 2003 the Indian firms B.R. Agrotech, Gharda and Meghmani won only one contract each (all under tender 04/2002)...”. The tender of 2003 was under Domestic Budget and has not been evaluated by DIR. The above three Indian firms had submitted their bids for the first time in the year 2002 only, and had been awarded contracts as per qualification criteria of the bid document approved by the World Bank. The above three Indian firms had not submitted any bid during the years 2000 and 2001. The only Indian firm to have submitted a bid in the year 2001 was M/s Global Spin Weave, who was rejected during preliminary examination itself on account of having submitted incorrect information and for misrepresentation of facts, as has been clearly brought out in the bid evaluation report. **Thus observations of DIR are factually incorrect.** B.R. Agrotech, Gharda and Meghmani got contracts in subsequent tenders in 2003, 2004, 2005 and 2006 as per qualification criteria. Observation of DIR in reference to RITES tender of 2002 vide footnote no. 79 and 80 on page 438 of the DIR report may also be noted which respectively state “...Despite efforts by the apparent cartel ... both schedules were awarded to Meghmani, the lowest responsive bidder...” “...Despite efforts by the apparent cartel ...the contract was awarded to BR Agrotech, the lowest responsive bidder...”.

It is clear that cartel could be operating. This was identified in 2001 and referred to Bank and a conscious purchase decision was taken and remedial measures initiated with good results. It is also not clear whether significantly higher prices were charged, including pre-World Bank procurement.

Investigations on whether higher than market prices were charged by these companies operating as cartel should be launched by World Bank as these are all multinational companies. The Government of India will also assist this exercise. Appropriate “sanctions” could be initiated against the firms/suppliers as per the existing legal provisions and also the terms and conditions in the bid documents. However, it would be evident that the inference of fraud and corruption would appear to be completely misplaced.

### **Competitive International Bidding:**

**DIR has observed that Competitive International Bidding was prevented. Two instances have been pointed out in this regard:**

- I. UK based Agropharm Ltd initially won a contract on the condition of obtaining a CIB Registration. Agropharm and its Indian agent attempted for more than eight months to obtain a license, but were refused by the CIB on the grounds that licenses could be granted only to companies with operations in India. Consequently RITES awarded contract to Bayer, a member of the apparent cartel and the next lowest evaluated bidder with a unit price nearly twice that of Agropharm.**
- II. Cynamid, in a complaint to INT in March 2000 alleged that it had attempted to obtain CIB registration since 1997, but the process had been delayed because of competitor interference and that its lack of license could prevent it from receiving MCP contracts.**

**Comments:**

Reference to point no (1), this is to state that the specific matter pertains to one U.K. based firm, M/s Agropharm Ltd. A notification of award had been issued by RITES to M/s Agropharm Ltd for one schedule, being the lowest bidder. This was done when PAC consciously overruled BEC's recommendations and made it technically responsive. M/s Agropharm did not have CIB Registration of their product, which (as per terms of NOA) was to be submitted within 21 days from the date of the NOA. The firm had committed to do the same by an undertaking as part of their bid. The firm even after due clarification by the Ministry of Agriculture did not submit an application as per relevant section of the Insecticides Act. Efforts to resolve the issue involving M/s Agropharm came to a nought as their representative did not cooperate. To resolve the issue several meetings were held including one on 17.11.03 at MOH&FW, which had been attended by officers from the World Bank. M/s Agropharm had failed to get CIB Registration. NOA on M/s Agropharm became null and void as per terms and conditions of the NOA. The World Bank declined to give their 'no objection' to procurement from the next lowest qualified bidder. As a follow up of this matter, a meeting was held on 21.1.04 under the Chairmanship of Additional Secretary, Ministry of Agriculture with officers from MOH&FW, CIB and M/s RITES. It was clarified that "...a foreign firm can apply for registration of a product with CIB through its local office as per relevant Sections of the Act. ... For a new previously unregistered product, registration is done under section 9(3) for which application is to be submitted by the company in prescribed form, including complete requisite data on laboratory tests and studies under Indian field conditions with regards to bio-efficacy of the product and its safety to human beings and animals. ... For registration under Section 9(4) for already registered molecule, company is not required to provide data on field trials etc., the company must, however, provide detailed information on the process of manufacture, and give documentary evidence about constitution of the product (including the inert material)...".

From the above, it would be clear that MOH&FW had taken reasonable steps to support the firm in getting their CIB registration. None of this has been taken note of by DIR, but extensive interviews of the parent UK Company have been documented and made the basis of a corruption charge against CIB. This methodology is clearly inappropriate.

Further, the corruption issue is sought to be highlighted by stating that Bayer was contracted at a price twice that of Agropharm. This was a conscious decision taken at the highest level and approved by JS&FA, DG, and Secretary and with duly recorded justification because of the perceived need at that time. The said procurement was under the schedule allotted to Rajasthan state and the material was urgently required by the state for the approaching transmission season.

In conclusion, it is apparent that DIR has not noted and appreciated the full facts and has instead given credence to the communication between M/s. Agropharm and its agent in India. It would be inappropriate for this Ministry to comment on the financial dealings between a private firm and its agent. The agent and its principal are guided by their own interests and each would like to extract maximum from the other.

Even then, the matter has been taken up with Ministry of Agriculture for investigating it further. We are also recommending to the Ministry of Agriculture that they come out with "business standards" for disposing registration applications in a time bound manner. We also recommend a web-based registration mechanism.

With regard to the issue raised by M/s. Cynamid regarding the delay of its registration with CIB, this Ministry is not concerned. Even then we had already taken up with the controlling Ministry of CIB for appropriate action. It may be noticed that Cynamid obtained registration of their product with CIB in April, 2000, and was awarded a contract for Synthetic Pyrethroids by RITES in the year 2000 itself (NOA No. RITES/MSM/MCP/08/2000/128 dated 20.12.2000).

Thus apparently the DIR observation of possible corruption in CIB registration is incorrect.

The DIR's observations that RITES might have informed four possibly colluding firms was requested to be commented by M/s. RITES. RITES has refuted observations of DIR.

## **II. PROCUREMENT OF MOSQUITO BED-NETS:**

**DIR has observed as under:**

- **One supplier failed to fulfill its contract on time.**
- **The project was suspended in part due to procurement bottlenecks.**
- **Two contracts were cancelled due to fraudulent misrepresentations by two suppliers.**
- **The project received numerous complaints about poor quality bednets being supplied.**

DIR had examined the following contracts of mosquito bed nets through PSA, viz., RITES:

<b>Contract Number</b>	<b>Supplier</b>	<b>Contract Description (no. of bed r</b>	<b>Contract Ar (US \$)</b>	<b>Unit price (Rs)</b>
RITES/MSM/MCP/09/2000/117	Issa Industries	60,000	221,986	180.00
RITES/MSM/MCP/12/2000/140	R.S. Industries	325,000	1,110,259	158.75
RITES/MSM/MCP/09/2002/189	Vestergaard Frand:	230,000	447,770	93.00
RITES/MSM/MCP/02/2003/216	Global Spin Weav:	240,000	449,526	86.00
RITES/MSM/MCP/02/2003/217	Chemicals Internat	120,000	245,805	89.40
RITES/MSM/MCP/02/2003/218	EMCO Enterprises	360,000	658,608	84.00
RITES/MSM/MCP/02/2003/224	Chemicals Internat	55,600	113,834	89.40
RITES/MSM/MCP/02/2003/225	Vestergaard Frand:	194,400	390,126	91.18
RITES/MSM/MCP/02/2003/226	Vestergaard Frand:	230,000	461,569	91.18
RITES/MSM/MCP/08/2004: Sch 1	Chemicals Internat	530,000	1,071,003	88.00 & 89.
RITES/MSM/MCP/08/2004: Sch 2	Global Spin Weav:	705,000	1,463,890	91.00
RITES/MSM/MCP/08/2004: Sch 9 10	Argas Consultancy	450,000	753,435	88.46
RITES/MSM/MCP/08/2004: Sch 3, 8	Vestergaard Frand:	830,000	1,726,052	90.50 to 91.
RITES/MSM/MCP/08/2004: Sch 6, 12 and13	EMCO Enterprises	1,285,000	2,668,225	91.00
<b>Total</b>		<b>5,615,000</b>	<b>11,782,088</b>	

**Specifically speaking the DIR's observations could be classified into following broad categories:**

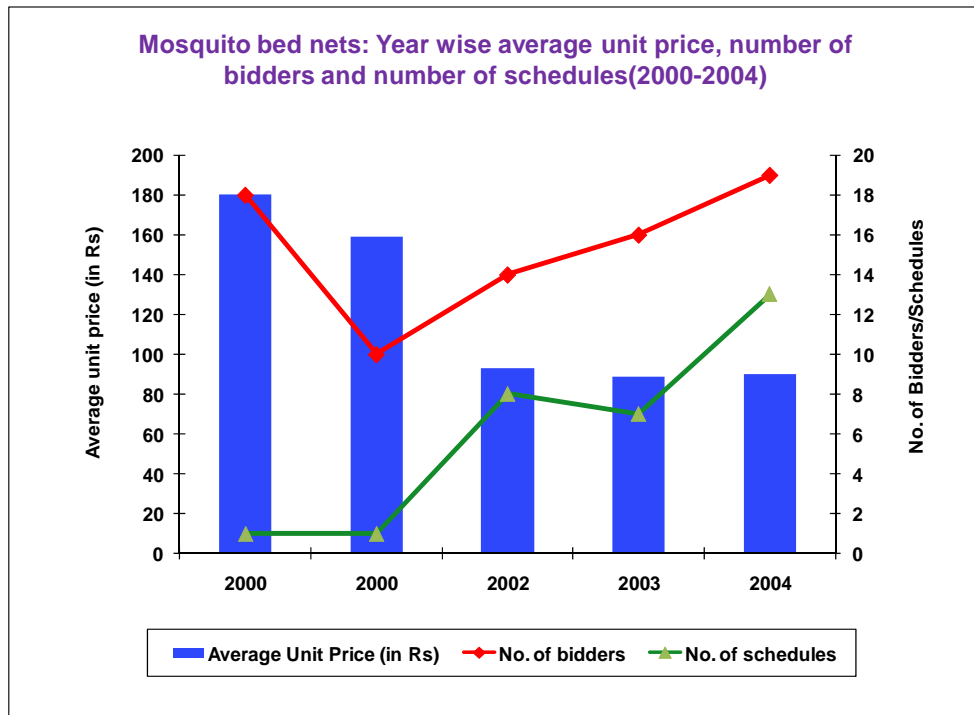
- a) **The Agrawal family businesses exhibited indicators of engaging in collusive practices.**
  - **Superior and GSW were associated and exhibited indicators of collusion.**
  - **Superior and EMCO were associated and exhibited indicators of collusion.**
  - **EMCO and GSW exhibited indicators of collusion.**
  - **Complaints against the Agrawal companies surged during the final tender for bed nets under the MCP**
- b) **The Agrawal Companies may have received collusive support from two additional competing bidders.**

- c) Numbers of bidders per contract progressively decreased over the history of the MCP bed net tenders.
- d) Bidders competing against the Agrawal Companies exhibited independent indicators of corrupt and fraudulent practices.
- e) Other indicators.
- f) The quality of EMCO's bed nets is contested.

**Comments:**

**Observations- Summary:**

The Chart is given below regarding the supply of bed nets.



The following facts emerge:-

- e) While it is correct that there were several companies which had ownership links with the one extended business family, they did not get contract in several years even they bid and when they bid they got only part contracts in competition with several others. Therefore, they were not able to stifle the competition.
- f) The number of bidders actually increased over time
- g) The prices of bed nets substantially declined during this period.
- h) The issues of poor quality or delayed supply are non- fulfillment of contractual obligations and is not indicator of quality or corruption. Further, legal, corruption and administrative action have been taken against the companies concerned which has separately been acknowledged in the DIR. Therefore, the DIR has either not been able to examine all the facts or understand the facts in proper or holistic perspective thereby creating impression which are contrary to the truth.

**Detailed observations:**

Each observation of the DIR is commented below.

The Agrawal family businesses exhibited indicators of engaging in collusive practices.

- Superior and GSW were associated and exhibited indicators of collusion.
- Superior and EMCO were associated and exhibited indicators of collusion.

- **EMCO and GSW exhibited indicators of collusion.**
- **Complaints against the Agrawal companies surged during the final tender for bed nets under the MCP**

The issues mentioned above will be further investigated and action taken as per the existing legal provisions and standard bid conditions.

**The Agrawal Companies may have received collusive support from two additional competing bidders.**

The issue mentioned above will be further investigated and action taken as per the existing legal provisions and standard bid conditions.

**Numbers of bidders per contract progressively decreased over the history of the MCP bed net tenders.**

In the first tender of 2000-2001, 18 bidders had participated for procurement of 60,000 bed nets in one schedule, consequently only one contract was issued. However, during the last tender of 2004-2005 19 bidders had participated for procurement of 38 lakh bed nets in 13 schedules. A total of thirteen contracts were issued by RITES, against this tender, to five firms, Vestergaard (3), Chemicals (2), Argus (2), EMCO (4), GSW (2). This will clearly indicate that response to the last tender had in fact not decreased. **It can thus be seen that the conclusion drawn by DIR is factually incorrect and giving a distorted picture about decrease in competition over the years.** It is also important to note that prices declined after the year 2000 substantially.

Though the alleged Agrawal companies had been submitting bids since the year 2000, they were successful in getting contracts in 2003 and 2004 only.

A total of 16 bidders had participated in the RITES tender for 2003, and contracts had been awarded to four lowest evaluated suppliers. In RITES tender of 2004, 19 bidders had participated and contracts placed on five suppliers. A look at unit price trend of bed nets, as per table on page 11, would reveal substantial fall in price from 2000 to 2002 and maintained thereafter. Thus response to the tenders of 2003 and 2004 can be considered adequate and is apparently not affected by participation by the Agrawal companies.

SL	Supplier	No. of contracts	Action taken
1.	M/s Vestergaard	Six	NOA Nos 248 to 250 cancelled and withdrawn in view of misrepresentation and financial irregularity. Project Authority Certificates cancelled and withdrawn against these NOAs in view of misrepresentation and financial irregularity. Debarred from business for 2 yrs.
2.	M/s Argus	Two	NOA cancelled and withdrawn and bid security forfeited in view of non submission of performance security as per provisions of NOA/Bid Document.
3.	M/s R.S. Industries	N.A.	Not considered for award in view of submission of false performance certificates.
4.	M/s Superior Fabrics	N.A.	Not considered for award in view of fraudulent practice in an earlier contract award under domestic budget.

**Bidders competing against the Agrawal Companies exhibited independent indicators of corrupt and fraudulent practices.**

DIR has noted that MOHFW had taken action against the firms who were indulging in submission of incorrect performance certificates.

**Other indicators**

**DIR observed that two groups of companies – Bansal Industries and Srijee Udyog and Nath Cehmicals and Super Standard Tools & Equipment – submitted bids with identical unit prices, which is an indicator of collusion given the disparity in firms’ cost structures, i.e. variable and fixed costs.**

**Superior and GSW together with R S Industries and B R & Sons submitted sequentially numbered bid securities. This is also an indicator of collusion.**

**RITES’s letter to World Bank states that the lowest response bidder, Fanny Pharmaceuticals, misrepresented facts regarding its manufacturing capacity in order to influence procurement process.**

**Comments:**

None of the above bidders were considered for award of contract. Apparently RITES had not apprised PAC about Superior, GSW, R.S. Industries and B.R. & Sons. However, the issues mentioned above will be further investigated and action taken as per the existing legal provisions and standard bid conditions.

**The quality of EMCO’s bed nets is contested. DIR observed that quality of EMCO’s bed nets is contested. The DIR Report gives specific comments of DMO, Cuttack,, DMO, Mayurbhanj, and Utkal Women’s Activist’s Forum, in this regard.**

**Comments**

Bed nets have been supplied with necessary inspection of RITES through a laboratory approved by Ministry Of Textiles, Government of India. As per record of NVBDCP no complaint had been received from DMO, Cuttack and Mayurbhanj. The Consignee Receipts forwarded by RITES from these consignees do not mention any defect in the supplies. A complaint received from Utkal Women’s Activist’s Form had been examined by RITES, and satisfactory supplies have been confirmed by the concerned CDMO, Keonjhar District, Orissa.

**DIR mentions that one supplier failed to fulfill its contract on time.**

**Comments**

One supplier, R.S. Industries, had been awarded contract for supply of 325,000 bednets. However as the supplier could not complete supplies even during the extended delivery period, the award was cancelled and withdrawn for the remaining quantity of 60,000 bed nets, and applicable liquidated damages for delayed supplies deducted from the payment of the supplier as per provision of the bid document.

**III. PROCUREMENT OF PHARMACEUTICALS:**

**Observations of DIR regarding procurement of Pharmaceuticals (Chloroquine, Chloroquine/Primaquine Combi Blister Packs, DEC tablets, Arteether injections):**

DIR examined following contracts of Pharmaceuticals:

Date	Contract Number	Supplier	Contract Amount (USD)
<b>Chloroquine</b>			
Sept., 17, 2001	RITES/MSM/MCP/01/2001/151	Nestor Pharmaceuticals Lin	230055

Jan., 2, 2004	RITES/MSM/MCP/05/2003/220	Nestor Pharmaceuticals Lin	1182184
Jan., 7, 2004	RITES/MSM/MCP/05/2003/221	Pure Pharma Limited	620565
Mar., 21, 2005	RITES/MSM/MCP/05/2004/244	Pure Pharma Limited	387231
Apr., 15, 2005	RITES/MSM/MCP/05/2004/243	Nestor Pharmaceuticals Lin	563080
Apr., 19, 2005	RITES/MSM/MCP/15/2004/266	Pure Pharma Limited	505699
Apr. 19, 2005	RITES/MSM/MCP/15/2004/267	Legend Drugs & Formulati Private Limited	226905
May 1, 2005	RITES/MSM/MCP/15/2004/265	Nestor Pharmaceuticals Lin	455892
	RITES/MSM/MCP/05/2004/242	Fourrts (India) Laboratories Ltd.	104227
Total			4275838
<b>Combi Blister Packs</b>			
Apr, 22, 2003	RITES/MSM/MCP/01/2003: Schedules IV VII	Endolabs Ltd.,	113449
Apr, 22, 2003	RITES/MSM/MCP/01/2003: Schedules I ar	Hindustan Laboratories	52654
Apr. 22, 2003	RITES/MSM/MCP/01/2003: Schedules II, I and VIII	Zest Pharma	173092
Mar. 1, 2005	RITES/MSM/MCP/02/2004/247: Schedules V-VIII	Nestor Pharmaceuticals Lin	638449
Mar. 1, 2005	RITES/MSM/MCP/02/2004/247: Schedules and IV	Pure Pharma Limited	282914
Total			1260558
<b>DEC Tablets</b>			
Oct., 9, 2001	RITES/MSM/MCP/02/2001/155	Carewell Pharma	243852
Oct., 31, 2001	RITES/MSM/MCP/02/2001/146	Carewell Pharma	102418
Nov., 11, 2002	RITES/MSM/MCP/08/2002/185	Carewell Pharma	316116
Jan., 25, 2003	RITES/MSM/MCP/08/2002/188	Carewell Pharma	93926
Jan., 7, 2004	RITES/MSM/MCP/04/2003/219	Pure Pharma Limited	322572
May 11, 2004	RITES/MSM/MCP/01/2004/236	Hindustan Laboratories	276666
May 15, 2004	RITES/MSM/MCP/01/2004/235	Pure Pharma Limited	1272772
Mar., 24, 2005	RITES/MSM/MCP/14/2004/262	Medicamen Biotech Limite	249839
Apr., 5, 2005	RITES/MSM/MCP/14/2004/261	Carewell Pharma	118957
Apr. 5, 2005	RITES/MSM/MCP/14/2004/260	Fourrts (India) Laboratories Ltd.,	150171
Apr. 9, 2005	RITES/MSM/MCP/14/2004/259	Pure Pharma Limited	635178
Apr. 15, 2005	RITES/MSM/MCP/14/2004/264	Pure Pharma Limited	320539
Total			4103006

DIR's observations relate to mainly three broad areas which are:

- Collusive behaviour
- Anti-competitive bidding process
- Concerns about poor quality

**DIR has observed that there is “concentration of contract awards among limited winners”.**

#### **Comments**

While examining the contracts in the period of analysis of the DIR it is observed that though Pure Pharma and Carewell Pharma Ltd. dominated the award of MCP DEC contracts, but no other indicators of collusion or any other malpractice has been observed even in the DIR report. Such a situation is possibly a normal market phenomenon

wherein some firms are specialized in some markets. It is presumed that some of these companies have targeted for the market share of government supply. It is a companies' strategy whether to be in government sector supplies or in any other sector. Accordingly, over a period of time, some companies will have a dominant share. Apparently there is no anti competitive indicator in the contracts awarded.

**DIR has observed that in the contracts of Chloroquine Phosphate and Combi-Blister Packs there are indicators of corruption particularly relating to the differential in their prices which was found to be symmetrical and was rotating between these two firms. And, further, it has also mentioned that M/s. Nestor won a greater proportion of contracts than Pure Pharma and both these firms were alleged to have also tampered with drugs to undercut competitors' prices.**

#### **Comments**

The kind of statistical analysis which has been done by DIR while arriving at this conclusion were not used either by the procurement agency or the Ministry or the World Bank for deciding these procurements. Since these issues have been raised now, they will be noted for including in the future procurement process. This Ministry also proposes to suggest actions against these companies who had allegedly indulged in collusive practice.

Reference to the complaint of Endolabs Limited, the bids of Pure Pharma, Nestor and Endolabs for RITES IFB No. RITES/MSM/MCP/02/2004 have been examined and it is observed that in fact Endolabs themselves have indicated higher import content in their bid for Combi Blister Packs as compared to Nestor and Pure Pharma. Whereas Endolabs indicated Rs. 1.82 to be the unit import content, Nestor and Pure Pharma had indicated Rs. 1.70 and Rs. 1.71 as per unit import content for the above said tender of RITES. Thus the complaint cited by DIR is apparently incorrect. However, this will be further investigated through appropriate authorities.

**DIR has also observed that under the DEC contracts, large disparity existed between the number of bids purchased and the final bidders – the number of bidders were much lower than the number of bid document purchasers.**

#### **Comments**

Till 2003, the standard bid document conditions were very stringent. They were revised by the World Bank in the year 2004 (revised Standard Bidding Document for Health Sector Products, May 2004). Post 2004, it could be noticed that the number of bidders and number of purchasers of bid documents became almost same particularly in the second tender of 2004. Therefore, it is inappropriate to come to a drastic conclusion that there was collusion till 2004 and it ceased post 2004.

**DIR has also observed “DEC implementation quality is contested”.**

#### **Comments**

DEC is a hygroscopic compound, sensitive to environmental conditions of humidity. Though every batch of DEC tablets was subject to RITES inspection, some complaints regarding quality had been received from consignees. The matter had been taken up with respective suppliers and replacement of the affected stock was taken as per warranty clause of the bid document. Further, steps were taken to supply this item in Blister Packs instead of jars. Consignee level inspection of entire supplies has been done to ensure quality.

Even DIR has noticed the corrective steps which could have been taken, namely, replacement of the sub standard supplies as per the bid conditions, had been taken. This issue relates to fulfillment of contractual obligations. There is no indicator or otherwise of fraud and corruption.

**DIR has also noted “similarities and timing of indicators with collusive activities of RCH”.**

#### **Comments**

Government of India and the World Bank have taken action against Nestor and Pure Pharma. Business with these two firms has been suspended. No further commodity items have been procured taken from these two firms.

#### **IV. RITES**

M/s RITES have given a very detailed reply to the observations made in the DIR which counters all the observations. These are under examination and will be forwarded to the Bank separately later.

**DIR observes that “....RITES may have informed four possibly colluding firms – Aventis, Bayer, BASF, and Zeneca – of the bid cost estimates for the pyrethroid contracts on which they were bidding....”.**

RITES has refuted this observation of DIR as incorrect.

**DIR has also observed that “....review of MCP complaints identified 14 complaints alleging that RITES was limiting competition for tenders by including restrictive qualification criteria in its bidding documents...”.**

##### **Comments:**

The observation of DIR relates to various complaints received over a period of time. It is observed that whenever any procurement agency or Ministry undertakes procurement of mosquito bednets, there is a spurt in complaints and counter-complaints – many of them are anonymous or pseudonymous. Even then, Ministry has been getting them investigated and suitable corrective measures have been taken before proceeding further in the contracts.

MOHFW had sought the comments of M/s. RITES on the issue of about 14 complaints and the response of RITES is enclosed as Annexure-I.

Reference to one specific complaint pointed out in the DIR report, RITES has informed that they have issued an amendment to weight specifications only after taking an written expert opinion of a Ministry of Textiles approved Laboratory which stated that “if all the parameters are within as per specifications, more weight of yarn does not indicate inferior quality or saving of cost to the Supplier”. RITES had further informed that as per Laboratory test reports, bursting strength, variety and net fabric etc. were as per technical specifications of the contract.

DIR does not specify the 14 complaints referred in the report. However, as informed by RITES they have taken action on the complaints received by them. A separate request would be made to Department of INT, World Bank for sharing copies of these complaints so that appropriate action could be taken for further investigation.

**DIR has also observed that “...RITES appeared to have taken only minimal steps to address possible collusive behaviour....”.**

##### **Comments:**

In the Synthetic Pyrethroid tender of 2001, the collusion had already been detected and show cause notices issued to Companies. The facts of the similar price bid of the bidders was also brought to the notice of World Bank as per the comments of M/s. RITES and World Bank, while acceding to the financing of this contract, had informed that this issue has been referred to Department of INT in the year 2002 itself. The contracts were finally funded by World Bank implying thereby that the Bank’s Department of Institutional Integrity might have cleared these cases from collusion aspects. DIR has not taken these facts into account. Possible collusion is also not a discovery made by DIR.

DIR has not examined market prices while stating that significantly higher prices were paid. Nevertheless, investigations on whether higher than market prices at that time were charged by these companies operating as cartel should be launched by World Bank as these are all multinational companies. The Government of India will also assist this exercise. Appropriate “sanctions” could be initiated against the firms/suppliers as per the existing legal provisions and also the terms and conditions in the bid documents. It would be evident that the inference of fraud and corruption would appear completely misplaced.

**It has also been observed by DIR that “...MCP bed net contract bidders Superior Fabrics, EMCO, GSW, and HAL were interrelated...” and RITES “...provided only a superficial denial of the allegations...”**

**Comments:**

When this issue of familial companies came to the notice of Government of India in our procurement, we had already taken steps for ensuring that the Standard Bidding Document for domestic procurement are modified to include clauses for disclosure of information of the interest of the owners/directors of the bidding firms in other firms. But this has not been adopted in the Standard Bidding Document of World Bank procurement. It is strongly recommended to have such provisions in the Standard Bidding Document of World Bank procurement.

**DIR has also observed that “...RITES did not appear to have followed up on a complaint from Akrungaroon in February 2005...”**

RITES in their response have denied this observation

**DIR has also observed that “...indicators of collusion ended at the same time on multiple RITES procurements...”**

DIR observes that in 2004 the indicators “.....ceased in procurements of Pyrethroids and DEC tablets, while competition increased for Chloroquine Phosphate contracts.....”

Apparently DIR has failed to recognize actions taken by the World Bank and MOH&FW during this period to break collusion (if any), enhance competition and encourage entry of new suppliers, by way of (i) revision of Standard Bidding Document by the World Bank in May 2004, (ii) increasing number of schedules with smaller quantities per schedule, so that even small manufacturers could participate and qualify for small quantities, (iii) making review and approval of PAC (Purchase Advisory Committee, chaired by DGHS) mandatory for all procurements.

However, this Ministry is open for further improvements of procurement procedures.

**V. ANALYSIS OF SUPPLY CHAIN**

**While analyzing the supply chain DIR has commented on various aspects like storage facilities, inventory systems used by the SMOs and DMOs, inventory documents and records, inventory management, quality testing, monitoring of expiry dates and also some issues related to under deliveries.**

This Ministry is aware of these issues and is already taking steps for strengthening the storage, supplies, and distribution of pharmaceuticals and other materials. Some of the actions envisaged are:

- Strengthening of the warehouses at the State and District level
- Inducting professional “logistics manager” at the District and State level
- Post delivery inspection of goods with respect to quality and quantity
- Social audit of the supplies and its utilization by the beneficiary
- Strengthening MIS particularly with respect to record keeping, storage in ambient conditions, monitory of expiry, monitoring of quality and damaged goods pat District and PHC level.

**VI. PROCUREMENT AT THE STATE AND DISTRICT LEVEL:**

**DIR has found that the procurement at the State and District level was with “.....improper procurement methods in violation of the MCP credit agreement and that bidders engaged in fictitious competition.....”. Some other issues which have been mentioned in the DIR report relate to:**

- **Lack of competitive bidding**
- **Contract splitting**
- **Bid tampering**
- **Use of inappropriate procurement procedures – direct contracting instead of local shopping**

#### **Comments**

DIR has reviewed very large number of small value contracts which were executed at the District level. While reviewing they found indicators as listed above. Such procurements are done locally at the District level.

The lapses mentioned above have been noted and systems will be revisited to see if they need to be strengthened. Simultaneously, oversight of both the State Government as well Central Government would also be strengthened. Ministry of Health & Family Welfare, Government of India has already constituted a High Powered Group to look into the issues of procurement at the local level.

### **VII. COMPLAINTS MANAGEMENT:**

**DIR observes that about 44% of the MCP complaints appear to have been resolved and they are unaware of the remaining complaints.**

MOHFW is committed to look into any complaints. In this direction, not only the Programme division but various investigative agencies examine the complaints and depending upon the gravity of the complaint action is initiated. It is proposed to have a computerized data base at the Central level in the programme division for monitoring all such complaints.

**FOOD AND DRUG CAPACITY BUILDING PROJECT**  
**Under World Bank Assistance**  
**Ministry of Health and Family Welfare**

Food and Drug Capacity Building project (FDCBP), with World Bank assistance, supports India's long term vision to improve the quality and safety of food and drugs by strengthening the regulatory frame-work and incorporating the components of information, education and communication, consumer education, training, etc.

The project was conceived with multi-dimensional approach seeking to strengthen the food and drug testing infrastructure with staff, equipments and training of personnel, etc. The project also aims to raise the awareness and improve behaviour of the consumers through information, education and communication on safety and quality of food and drugs. The project also envisaged to forge public-private linkages to promote product quality in the food and drug industry, especially in the small and medium sector.

FDCBP is an on-going project started in 2003 as a five year project. The project comes to a close on 30<sup>th</sup> June, 2008. Since this project was the first of its kind being implemented in a country and also unique from the Bank's perspective, it posed several challenges. Nevertheless, despite some implementation problems, the project has made significant progress and achievements in training of regulatory staff as well as the private industry personnel, ensuring quality improvement of street food vendors and households, updating the Indian Pharmacopoeia and initiation of National Pharmacovigilance Program. It is a nationwide project covering almost all the States/UTs in the country. Some of the key components of the project like civil works and procurement of equipments were centrally executed through a single agency while State Governments were to support other key components from their own budgets, more specifically the manpower. Therefore, implementation issues always became important in the project. Some of the States were able to make satisfactory achievements while others lagged behind. It is presently in the process of establishing the National Food Safety and Standards Authority under the Food Safety and Standards Act which has already been passed by the Parliament. Similar action is contemplated to amend the Drugs and Cosmetics Act, 1940 to establish the Central Drug Authority of India. Eventually these two autonomous bodies will take over the regulatory functions that are presently being performed by Government Departments and Government Laboratories etc. New activities and additionalities required to further strengthen this sector would subsequently be carried out by these two authorities.

The Ministry has received the detailed implementation review (DIR) report from the World Bank and has done a comprehensive review of the same and the responses to the specific issues raised in the DIR and proposed actions are given in the annexure.

**ANALYSIS OF DETAILED IMPLEMENTATION REVIEW (DIR)**

The DIR covers nine civil construction contracts and twenty one contracts for procurement of equipment etc. Some of the key findings which have been pointed out in the DIR report are as follows:

**CIVIL CONTRUCTION CONTRACTS:**

- (i) Defects and deficiencies in construction, poor quality and badly fitted material aluminium windows, non-adherence to the specifications
- (ii) Disqualification of contractors
- (iii) Bidders providing false information – it is alleged that one of the bidder provided false information.

Even though the executing agency has confirmed that the specifications have been met, the Ministry is constituting an independent committee of experts to carry out site visits and assess the quality. Wherever necessary, samples will be drawn and non-destructive tests carried out to establish the quality and to confirm that specifications are met. This

exercise would be carried out jointly with Bank and would begin by 1<sup>st</sup> March, 2008 and would be completed by 30<sup>th</sup> April, 2008. Once the report from the committee of experts is received immediate follow-up would be taken up which may include:

- (i) Rectification of defects/deficiencies by the concerned agencies
- (ii) Penalising the contractors, including disqualification, recovery proceedings etc. against the defaulting contractors, if called for.
- (iii) Administrative action against the erring officials.

The DIR has pointed that one of the contractors' bid was wrongly rejected on the basis of "not meeting the qualification criteria".

With respect to that contract, the facts are as follows:-

1. **Contract No. HSCC/IFB/139CBP/FRSL/PM/BUII/04**  
**Contract Description: Construction of FRSL Ghaziabad**  
**DIR –Page 122**  
**Date of Award of the Contract: 12.05.2004**

DIR alleges that M/s Dewan Chand (L-1) bidder was wrongly disqualified by BEC on ground that the company failed to satisfy the turnover criteria. Documents available with the PSA M/s HSCC shows otherwise. The firm did not fulfill the requirement of having turnover of more than INR 70 million during any two out of the last five years. Documents are annexed in the detailed response. Furthermore, allegation of DIR regarding BEC not seeking clarification regarding credit facility did not arise as the firm had failed to meet the turnover criteria.

**Before awarding the contract, prior approval of the World Bank was also obtained vide by the PSA vide letter no. nil dated 28.9.2004. (Copy annexed in the detailed response)**

With regard to the observation (refer DIR p.120) on award of successive bids to one of the contractors namely M/s RKD Constructions Pvt. Ltd. for SDTRL, Bhubaneswar and State Drug Laboratory, Bangalore, it is true that the two members of Bid Evaluation Committee were common in both the cases should have exercised more caution in case of Bangalore contract which came later, yet it is also a fact that information purported to have been suppressed by the contractor would not have changed the outcome of the bid. However, the contractor has already stopped the work at Bangalore and the implementing agency has already initiated action to terminate the contract.

It may be further mentioned that the Ministry has already asked the PSA to seek explanation from the aforesaid two members and forward the same to the Ministry alongwith the PSA's report.

### **EQUIPMENTS PROCUREMENT AND INSTALLATIONS**

The DIR report has made observations on 21 contracts for procurement of equipment under the Capacity Building Project (CBP). At the outset, it may be mentioned that the report while recognizing that there have been delays at different stages of the process, the findings do not suggest existence of collusive behaviour or cartels, as suppliers winning the contracts varied greatly and there are no suspicious patterns in the award of contracts across the tenders. However, some of the general observations in a number of contracts made in DIR are as follows:

- (1) **Instances of reliance on bidders compliance statements and catalogues to assess the bidder's technical compliance in two successive years.**

It may be clarified that the Ministry, which is the final decision making body took a considered view and decided to accept the signed documents furnished by the bidder rather than going by the catalogues/other printed materials which may /may not be updated and cannot be taken as authentic documents for deciding the conformity with the specifications prescribed. In accordance with this decision taken in February 2004, this principle was applied to all

subsequent contracts. In the context of this policy decision it may be seen that the bidders that were found to be non responsive in 2003 became technically response in 2004.

**(2) Recommendations of Bid Evaluation Committee has been over-ruled or reversed by the Steering Committee.**

On page 59 of DIR it has been mentioned that “Under the FDCBP, the DIR observed an unusual method in which bids were evaluated and recommended for contract, Typically, contract awards are based on the bid evaluation report(BER) and recommendations of the Bid Evaluation Committee (BEC) under the auspices of the project’s PSA. Yet, for at least three tenders of equipments, *the Ministry of Health and Family Welfare installed a special steering committee* composed by Ministry of Health and Family Welfare official, officials from the PSA, and technical experts to review bid submissions and recommended bid awards”.

**It may be clarified that for smooth implementation of the project, a detailed financial management manual was prepared after due consultation with the World Bank which was later formally vetted by them in the year 2003 (beginning of the project). As per the provisions in the manuals (refer page7-8), a project steering committee was constituted. This committee was mandated to decide on the procurement activities related to the project among other functions. Therefore, there was absolutely no departure from the laid down procedures.**

**(3) Issues relating to alleged forged performance certificates:**

Out of the 21 cases reviewed in the DIR, only in four cases such observations have been made. In such cases, the Ministry would initiate detailed investigation/inquiry in a time bound nature. Each case would be looked into and inquiry ordered by 30<sup>th</sup> April, 2008.

**(4) Delays in evaluation of bids and award and performance of the contracts etc.**

There have been some delays which can be attributed to:

- (i) Highly specialized nature of the equipments.
- (ii) Non-readiness of the sites.
- (iii) Logistic problems like far flung areas, hilly regions like north-east etc.
- (iv) Delayed response of the State Governments.

As has been suggested in respect of Civil Works, a joint inspection, wherever required, would be carried out and corrective steps would be initiated to ensure optimal utilization of the facility before closure of the project.

**(5) Issues related to submission of insufficient documents:**

DIR has made this observation in at least two cases. With respect to these two cases, the details are as follows:-

**1. Contract No. HSCC/PUR/CBP (F&D)/ICB-1D/2003/351**

**Contract Description Supplier: Bruker biospin**

**Item: Nuclear Magnetic Resonance (2 Nos.)**

While the details of past supplies and the satisfactory performance were not as per the prescribed format, the list of supplies made in Indian market by this firm was of very reputed institution as per the details attached. It is important to note that even though 23 documents were sold, only 2 bids were received for the specialized item. The technical assessment of the second bidder was assessed as non-responsive, it is true that bid evaluation committee did not seek a clarification from M/s Bruker Biospin about their details of the past supplies not being in prescribed format but BEC was apparently guided by the fact that there is one responsive bidder who was L1 by USD 212390 in comparison to L2 (non responsive bidder), this perhaps was a procedural shortcoming and doubt about the performance of the equipment was unfounded and the supplies have been completed satisfactorily.

## **2. Contract No. HSCC/PUR/CBP(F&D)/ICB-1B/2003/389**

**Contract Description supplier: M/s Electrolab, Item: Dissolution Apparatus with Auto sampler (2 Nos.)**

**Date of Award of Contract: 19.01.2006**

The DIR has alleged that “while bid usually include hundreds of pages, Electrolab’s bid was only 14 pages. Although BER reports that the company was asked to furnish additional documents to supplement its bid, the DIR has seen no evidence that Electrolab has done so. This is a potential indicator of flaws in the procurement process”.

The PSA had sought clarification from M/s. Electrolab vide letter no. nil dated 19.8.2004 to which the time had responded vide their letter dated 14.9.2004 and had submitted documents running to almost 100 pages. The documents are annexed on the detailed response. Therefore, the DIR observations are misplaced.

### **Summary:**

To sum up, as far as civil works are concerned out of the 41 works, 29 have already been completed and 12 are in various stages of execution. Of these 12 works, it is decided that only 8 will be completed by the closure date of the project and remaining 4 projects namely State Drug Testing & Research Laboratory Bangalore, State Food Laboratory Imphal, PHO Laboratory Kolkata and Central Food Laboratory, Naxalbari would be dropped. All other works under execution would be completed by 30<sup>th</sup> May, 2008.

As regards procurement of equipments, 69 different kinds of items at an estimated cost of Rs.7 crores are to be procured under NCB/NS through M/s HSCC for which tenders were floated. 9 different kinds of items at an estimated cost of Rs.19 crores are to be procured under ICB. Another set of 4 equipments (HPLC digital, AAS, HPTLC and GCMS) worth Rs.8.58 crores has to be re-tendered in which the World Bank approval has being sought. However, in view of the paucity of time, it would not be possible to procure the above equipments and install them before June, 2008. Therefore, procurement of the above equipments under CBP would be shelved. Installation of equipments already procured and those in the pipeline would be completed and made fully functional by 31<sup>st</sup> May, 2008.

Instead of taking new initiatives both in civil works and procurement of equipments etc., it is felt that the remaining time left may be better utilized to consolidate the efforts, inputs and resources that have already gone into the project to maximize the benefits and outcomes.

It may be pertinent to mention here that implementation of Food Standards and Safety Act and establishment of Food Authority is also in an advanced stage. It is expected that the Food Authority would become functional in the next couple of months and it would appropriate if the work relating to capacity assessment and working out of further requirements of strengthening the regulatory mechanism is left to the Food Authority for the time being. The resources required for the same as could be met out of the country budget or World Bank felt necessary.

### **The following actions with time line are envisaged:**

- (1) Completion of joint inspection of the sites, both civil and equipment sites by 30<sup>th</sup> April , 2008.**
- (2) Corrective steps like meeting the deficiencies and correction of defects by 31<sup>st</sup> May, 2008.**
- (3) Penal action against contractors/suppliers by 30<sup>th</sup> April, 2008. Action again erring officials/agencies, if any at the earliest.**
- (4) Concerted efforts to complete the works in pipe-line to ensure their completion by 31<sup>st</sup> May, 2008.**
- (5) Impact assessment study with technical support from World Bank will be completed by September/October, 2008 as part of the implementation completion report of the project.**
- (6) Out of the total committed assistance of USD 54 million, an amount of USD 23.7 has been utilized already and approximately an additional USD 13 million would stand utilized by the close of the project.**

