Chapter-VI
Public Sector Undertakings under the Ministry of Electronics and Information Technology

6.1 Procurement of hardware/ software items to the tune of ₹ 890.34 crore through Strategic Alliance

NICSI procured hardware and software costing ₹ 890.34 crore through the "Strategic Alliance" route in contravention of General Financial Rules, 2005 and departmental instructions and thus failed to ensure transparency and competitiveness in the procurement process.

National Informatics Centre Service Inc. (NICSI) was established in 1995 as a Section-8[100] Company under Ministry of Electronics and Information Technology[101] (MeitY) for providing and procuring Information and Technology (IT) solutions for e-governance projects undertaken by National Informatics Centre (NIC), MeitY and other Government Departments and organisations (viz. PSUs, ABs etc.). Rule 160 of General Financial Rules 2005 (GFR 2005) stipulates that all government purchases should be made in transparent, competitive and fair manner so as to secure best value for money. Rule 141A was inserted in GFR with effect from 09 August 2016 to provide for procurement on "Government e-Marketplace" (GeM) which has been established as a portal for online procurement of common use Goods and Services required by various Government Departments/ Organizations/ Public Sector Undertakings. Rule 149 of GFR 2005 gives the three standard methods of obtaining bids for procurement including "Single tender enquiry". Rule 154 *ibid*, gives the circumstances in which procurement from a single source can be resorted. These include cases where only a particular firm is the manufacturer of the required goods, and/ or for standardization of machinery or spare parts based on advice of a competent technical expert and approval of the competent authority. These purchases have to be supported by a "Proprietary Article Certificate" in prescribed format provided by the Ministry/Department.

In 2005, NICSI felt the need for having "Strategic Alliances (SAs)" directly with Original Equipment Manufacturers (OEMs) for procurement of strategic items[102] to reduce end cost of products. Subsequently, the Board of Directors of NICSI[103] approved both the process and mechanism for entering into agreements for SAs. Following these approvals, the NICSI has been entering into SAs agreements with OEMs/ authorized agents for procurement of ICT products based on laid down criteria. In December 2013, the NICSI board approved several measures to streamline the system of SAs such as introduction of technical and financial evaluation of proposals of OEMs, limiting the

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[100] Section 8 Company is registered under Section 8 of the Companies Act, 2013, and was previously known as Section 25 Company under the Companies Act, 1956. Such companies are registered for charitable and not- for -profit purposes.

[101] Earlier Department Electronics and Information Technology (DeiTY) under Ministry of Communications and IT.

[102] Proprietary and specialised items.

[103] The Board of Directors of NICSI, in its 47th Meeting held on 21 December 2005, approved the SA process and in the 48th meeting held on 27 March 2006, it approved its mechanism.

number of SAs and adopting more GFR compliant processes. In June 2014, MeitY issued instructions that SAs fully comply with GFR and other relevant rules.

As procurement through Strategic Alliances was not covered by any rule/ order issued by the Government, NICSI in its 88th BoD meeting (September 2014) decided to send a proposal through MeitY, to the Department of Expenditure (DoE) for inclusion of Strategic Alliance as a process of procurement and providing of ICT goods and services (including solutions) in GFR 2005. DoE while not specifically allowing incorporation of SAs in GFR, conveyed (August-2015) that they have no objection if NICSI enters into Strategic Alliance under Rule 154 of GFR 2005 subject to the condition that before placement of each order, Propriety Article Certificate (PAC) as per Rule 154 is provided by the Ministry/ Department. The IFD of MeitY was of the view that this implied that before issuing a PAC, the user Department would have to satisfy itself that the indented ICT goods and services does not have any other competing brand or supplier, which would make the concept of SAs unworkable. It therefore, advised the Company to carefully examine the response of DoE before its formal adoption as a process of procurement. Nevertheless, NICSI construed the communication from DoE as approval for the system of SAs provided procurement was undertaken on the basis of PACs, and decided to continue with the system.

Audit noted that during the period from April 2014 to April 2017, NICSI procured hardware and software costing ₹ 890.34 crore (**Annexure 6.1.1**) for user Departments through the SA route. These included procurement of Back-Up Servers; Routers; Switches; Anti-Virus solutions; network security etc. Prior to September 2015, NICSI had been making procurements using SAs based on the approval of its Board but without obtaining any PACs. This was in contravention of Rule 154 of GFR, 2005 and MeitY's subsequent instructions of June 2014.

From September 2015 i.e. after receiving advice of the DoE, NICSI began obtaining PACs for purchases made from a single source. However, a test check revealed that these were being furnished and used without mentioning clear, specific and cogent reasons as per the format prescribed in GFR, for procurement through a single source. There was also no indication that the PAC had been issued based on advice of any technical expert. Further, reports of the Consultant engaged for market survey indicated the existence of multiple vendors/ sources for each and every item. The main intent was thus, to only show perfunctory compliance with GFRs and DoE's instructions on obtaining PACs for procurements through SAs.

NICSI/ MeitY in its replies (March 2017, October 2018 and September 2019) gave details of the rationale and the chronology for adoption of the SA route. It highlighted that after receiving the advice of DoE, it has been making such procurements on the basis of PACs in terms of Rule 154 of GFRs. It intimated that procurement of goods and services through Strategic Alliance was only 25 *per cent* of the total procurement made by NICSI and that the total value of common items was not more than 15 *per cent* of the total value of the procurement made through SA. It further added that SAs have been discontinued from April 2017.

The reply of MeitY that it was making procurements on behalf of the user Departments does not hold good as it was required to observe all rules/ orders of GoI and be GFR compliant which was clearly stipulated by MeitY in its orders of June 2014. Further, prior to receipt of DoE's advice in August 2015, PACs were not being obtained for procurements under SA route which amounted to non-compliance with Rule 154 of GFRs. Though NICSI has claimed that it was subsequently procuring goods and services from single source only after obtaining PAC, a test check of PACs showed that due diligence was still wanting both while furnishing and accepting PACs. Further, MeitY has itself admitted (September 2019) that common items worth ₹ 133.55 crore[104] were procured under Strategic Alliance though these could have been procured through rate contracts or open bids.

Thus, NICSI undertook single source procurement through SA route to the extent of 25 *per cent* of its total procurement between April 2014 and April 2017. Procurements prior to September 2015 using this route were not in accordance with Rule 154 of GFR and procurements, thereafter, were undertaken based on PACs that were found to lack required details in test checked cases. Following audit objections, the practice of SAs was stopped by the Company after April 2017 but it was not specified why it was being continued earlier in contravention of GFRs.

New Delhi
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(MANISH KUMAR)
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Countersigned

New Delhi
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[104] 15 *per cent* of the total value of the procurement of ₹ 890.34 crore made till April 2017 through SA.