

CHAPTER III

COMPLIANCE AUDIT

This chapter presents the results of Compliance Audit of various departments of the Government, their field formations, local and autonomous bodies. Instances of lapses in the management of resources and failures in observance of the norms of regularity, propriety and economy have been presented in the succeeding paragraphs.

3.1 Undue favour to contractor

PUBLIC WORKS DEPARTMENT

3.1.1 Unjust enrichment to the contractors

Imprudent action of the Chief Engineer, Public Works Department, in applying the amended clause with retrospective effect resulted in unjust enrichment of ₹ 83.18 lakh to the contractors.

In Union Territory of Puducherry, the Public Works Department (PWD) follows Central Public Works Department (CPWD) manual for all civil and irrigation works. CPWD introduced (September 2004) a new clause 10 CA which provided for price variation for cement and steel during the stipulated period of contract. This was further amended (March 2007) by CPWD to include price variation for all materials and covering the justified extended period also beyond the stipulated period of contract.

The Chief Engineer (CE), PWD, clarified (June 2007) that clause 10 CA would be applicable only for those contracts which had clause 10 CA in the agreement and stated that (October 2008) the amended clause would be applicable only for the new works started on or after 13 March 2007. However, the CE later on instructed (April 2010) to extend the amended provisions of clause 10 CA for the works executed between 2004 and 2007 in contravention to the earlier clarification given by him in October 2008.

Scrutiny of records revealed (March 2012) that during 2010-12, EEs of three divisions¹ made excess payment ₹ 83.18 lakh to the contractors in

¹ (i) Building and Roads (South) Division, Puducherry; (ii) Irrigation Division, Puducherry; and (iii) Public Works Division, Yanam

respect of six works² executed during 2004-07 based on the direction given by CE in April 2010. It was noticed that out of these six works one work did not have the Clause 10 CA in agreement while one work was foreclosed.

Thus, the action of CE in applying the amended clause with retrospective effect even for the completed works resulted in unjust enrichment of ₹ 83.18 lakh to the contractors.

When pointed out by Audit, Government replied (December 2012) that the Department followed its own modified clause 10 CA, which was a totally different version from the clause 10 CA introduced by the CPWD. However the reply was silent about payment (₹ 35.86 lakh) made to a work which did not have Clause 10 CA in the agreement and for making payments with retrospective effect in respect of the other said works.

The reply is not acceptable, as PWD has to follow only the provisions contained in CPWD Manual and could not have a modified clause 10 CA of its own. Further, the modified clause 10 CA introduced by PWD (June 2007) did not provide for payment with retrospective effect.

3.2 Avoidable expenditure

PUBLIC WORKS DEPARTMENT

3.2.1 Avoidable cost and time overrun

Injudicious termination of contract for construction of a fishing harbour at Mahe resulted in avoidable time and cost escalation of ₹ 33.63 crore.

Government of India (GOI) accorded (October 2005) administrative approval for establishing a fishing harbour at Mahe at a cost of ₹ 22.60 crore with 100 *per cent* assistance under "Centrally sponsored scheme of Development of Marine Fisheries, Infrastructure and Post Harvest Operations". The project was to be completed in four years. GOI suggested (October 2005) to avail technical consultancy from the Harbour Engineering Department (HED) of Kerala and instructed to execute the

² (i) Construction of 18 numbers of police quarters-Type II at police campus at Yanam, (ii) Construction of sub-jail at Yanam, (iii) Construction of Backward class students Hostel at Yanam (iv) Construction of indoor stadium at Yanam (v) Construction of bed dam-cum-bridgde across Pambaiyar near confluence point at Sellipet, Puducherry and (vi) Providing road and drainage facilities to the internal streets of Poornankuppam village in Ariankuppam Commune, Puducherry.

project in accordance with the Detailed Project Report prepared by the Central Institute of Coastal Engineering for Fishery (CICEF), Bangalore. GOI released the first instalment of ₹ two crore in December 2005.

Without engaging HED, Kerala as consultant, PWD awarded (September 2006) the sub-work of "Construction of Northern breakwater, Southern breakwater and groyne to Mahe river" to a contractor at a cost of ₹ 25.39 crore with instruction to complete the work by April 2008. The work could be commenced only in February 2007 due to delay in contacting the HED for fixing the alignment of breakwater³. Though HED fixed the alignment in January 2007, it did not come forward to provide technical consultancy. PWD did not opt for any other consultancy.

Though the work was commenced in February 2007, PWD contacted CICEF only in January 2008 and obtained a part of the plan, drawings and structural details from it. Due to these delays the work progressed at a very slow pace and the contractor requested (April 2008) for extension of time upto 31 March 2009. PWD, however, terminated (September 2008) the contract after incurring ₹ 3.38 crore on the ground that the contractor would not complete the work even if extension of time was granted. Based on the request of the contractor, the CE appointed a sole arbitrator in April 2011.

The sole arbitrator concluded (December 2011) that termination of the contract was illegal and arbitrary and passed an award of ₹ 3.29 crore in favour of the contractor. PWD filed (April 2012) an appeal in the Court of Law, against this award which is still pending. Meanwhile, PWD revised the estimate to ₹ 71.62 crore and sought for (February to September 2010) additional grants from GOI. Though GOI approved (September 2010) the revised estimate, it restricted its contribution to the originally sanctioned amount of ₹ 22.60 crore and the UT Government had to obtain a loan of ₹ 49.02 crore from HUDCO to complete the project.

PWD entrusted (February 2011) the entire project to another contractor at a cost of ₹ 68.04 crore, which included ₹ 55.64 crore for the balance work that remained to be completed by the previous contractor. As of May 2012, 43 *per cent* of the work was completed and an expenditure of ₹ 31.34 crore had been made.

Thus, the failure of PWD to engage a consultant and to obtain plan, designs and drawings before commencing the work led to slow progress of work. Further, termination of the first contract led to time overrun and cost escalation of ₹ 33.63 crore⁴, as it took nearly two years to engage another contractor and as a result the fishermen were deprived of better berthing facilities as the work was delayed.

³ structures constructed on coasts to protect an anchorage from the effects of weather

⁴ ₹ 55.64 crore + ₹ 3.38 crore - ₹ 25.39 crore

Government replied (October 2012) that HED, Kerala had not come forward to offer consultancy services and the contract was terminated due to slow/poor progress of work.

The reply was not acceptable, as it was silent about reasons for not opting for any other consultancy and for the delay in obtaining the drawings and designs as these were the two major factors which contributed to the delay in execution of the project.

3.2.2 Avoidable payment

The Chief Engineer's injudicious rejection of the contractor's claim under the agreement and statutory provision led to arbitration and avoidable interest payment of ₹ 1.10 crore.

Government sanctioned (January 2004) ₹ 35.16 crore for the work 'Construction of women and children hospital at Ellaipillaichavady'. Public Works Department (PWD) awarded (October 2004) the work to a contractor with instructions to complete the work by April 2006. The agreement for the work, *inter alia*, provided for (a) use of cold twisted bars (CTD) for all the reinforced cement concrete works to be procured from the primary steel manufacturers such as SAIL, TISCO and VIZAG steel plant and (b) price variation under clause 10 C which allowed price variation for any material incorporated in work and for wages as a direct result of coming into force of any fresh law or statutory rule.

As the primary steel manufacturers had stopped manufacturing CTD bars, the contractor used Thermo Mechanically Treated (TMT) bars for the concrete works and claimed (January 2006) the difference in cost between CTD bars and TMT bars. He further claimed additional expenses towards payment of minimum wages under clause 10 C due to change in Statutory wages based on the revised notification issued (January 2005) by Labour Department. The CE rejected (June 2006) the claim stating that the rate quoted by the contractor was only for TMT bars, even though it was mentioned as CTD bars in his quote and that payment under clause 10 C could not be agreed upon.

The contractor filed (January 2008) a petition in the High Court of Madras to appoint an independent sole arbitrator. Based on the court order (December 2008), the CE appointed (February 2009) a sole arbitrator. The contractor claimed ₹ 39 crore as compensation for eight⁵ claims including

⁵ Claims on 10 C modified condition of contract, Change of CTD to TMT, additional expenses on machineries/ plant /equipment, labour force, overheads , loss of profit, loss due to locked deposits and loss of interest

interest. The arbitrator passed (November 2010) the award for ₹ 21.05 crore including interest and after deducting ₹ 2.48 crore already paid to the contractor, the net amount payable to the contractor was ₹ 18.57 crore. On negotiation (February 2011), the amount was brought down to ₹ 16.17 crore which included interest of ₹ 1.10 crore and the department paid (March 2012) the negotiated amount. Meanwhile, the work was completed (July 2011) at a cost of ₹ 36.49 crore after a delay of five years.

The CE failed to consider the known fact that the primary manufacturers had stopped manufacturing CTD bars and to take cognizance of the revised statutory order for payment of wages to the labourers. Injudicious action on the part of the CE by rejection of the contractor's claims on above counts led to the eventual dispute, arbitration and avoidable interest payment of ₹ 1.10 crore.

The matter was referred to Government in August 2012; reply was not received (December 2012).

PUBLIC WORKS AND REVENUE AND DISASTER MANAGEMENT DEPARTMENTS

3.2.3 Avoidable expenditure on acquisition of land

Failure of the Land Acquisition Officer and the Executive Engineer, Public Works Department to acquire land by invoking urgency provision resulted in avoidable expenditure of ₹ 1.05 crore.

The Ministry of Shipping, Road Transport and Highways, Government of India (MOSRTH) approved (May 2006) formation of a bye-pass road to NH 45 A from CH 179/700 to 183/00 KM, as the then existing carriage way with 150 years old small bridge traversing through T.R.Pattinam in Karaikal was unfit for free vehicular traffic. GOI sanctioned (January 2008) ₹ 3.04 crore towards acquisition of land for formation of bye-pass road and released first instalment of ₹ 2.58 crore which was deposited (February 2008) with the Land Acquisition Officer, Karaikal (LAO).

The Executive Engineer, Public Works Department (EE) sought (January 2008) administrative approval of the Chief Secretary for acquisition of the land invoking urgency provision⁶ of the Land Acquisition Act, 1894. The Chief Secretary directed (April 2008) the Collector, Karaikal to submit suitable proposal for approval of Government for invoking urgency provision. However, the LAO did not forward any proposal to invoke urgency provision on the ground that no such proposal was forwarded by

⁶ Land could be acquired immediately on payment of 80 per cent of land value

the EE and initiated (October 2008) the land acquisition proceedings under normal clause. The Section 4(1)⁷ notification under the Act was issued on 15 February 2009 and declaration under section 6⁸ was issued on 4 March 2010. Meanwhile MOSRTH released (May 2009) the balance amount of ₹ 37.10 lakh which was also deposited with the LAO.

In December 2010, the old bridge was found to be unfit and traffic was suspended immediately. After carrying out temporary restoration work, at a cost of ₹ 89.50 lakh light traffic was restored on 16 February 2011. Despite urgent requirement of the work and availability of funds, the LAO passed the award only on 5 March 2012, the last date⁹ within which the award had to be passed. The award amount of ₹ 5.97¹⁰ crore included ₹ 1.31 crore paid towards Additional Market Value (AMV) on the land cost, at the rate of 12 *per cent* for 1115 days from the date of Section 4(1) notification to the date of passing of the award. As MOSRTH did not come forward to meet the additional expenditure, the UT Government had to meet the same.

Had the LAO and EE acquired the land by invoking urgency provisions in February 2009 itself, the AMV could have been limited to ₹ 0.26¹¹ crore. Their failure to do so resulted in additional payment of ₹ 1.05 crore. Further, due to delay in land acquisition, the work could not be commenced and the public continued to utilize the old bridge, which was unfit and insufficient to handle the traffic.

When pointed out, Government replied (December 2012) that urgency provision was not invoked in order to give sufficient time to the residents and land owners in the alignment proposed to be acquired and invoking urgency provision would be more effective if the lands acquired were empty lands.

The reply is not acceptable as the site selection committee had recorded in September 2007 that the land involved was mostly fallow except for two terraced buildings and was originally proposed to be acquired by invoking urgency provision.

⁷ Preliminary notification that land is likely to be acquired for public purposes

⁸ Declaration that land is required for a public purpose

⁹ Two years from the date of declaration under section 6 (*i.e.*) from 4 March 2010.

¹⁰ ₹ 3.58 crore (land cost) + ₹ 1.08 crore (solatium) + ₹ 1.31 crore (AMV)

¹¹ (₹ 3.58 crore – ₹ 2.86 crore (80 *per cent* of land cost))*(12/100)*(1115/365 days)

CO-OPERATION DEPARTMENT**3.2.4 Avoidable payment**

Failure of the Registrar of Co-operative Societies to get approval of the UT Government for enhancement of the authorized share capital of a society within the due dates for repayment of loan led to avoidable payment of penal interest and foregoing of rebate totaling ₹ 33.09 lakh and further liability of ₹ 13.02 lakh.

National Co-operative Development Corporation (NCDC) sanctioned (March 2006) financial assistance of ₹ 25.63¹² crore and released ₹ 22.25 crore during 2006-08 to UT Government for rehabilitation and modernization of Pondicherry Co-operative Spinning Mills Limited (SPINCO), a society. In addition, SPINCO also availed (June 2007) working capital loan of ₹ seven crore from NCDC. The loans were sanctioned at interest rates that were one *per cent* below the prevailing rate of interest and in case of default, normal rate of interest would be applied along with penal interest at the rate of 2.5 *per cent* for the period of delay.

As SPINCO did not have the capacity to pay back the loan, NCDC rescheduled (February 2010) the outstanding loan of ₹ 20.31 crore to be repaid in six yearly installments starting from March 2011 and the first installment of ₹ 8.02 crore was due on 5 March 2011. SPINCO, running at loss, approached (July 2010) the UT Government for release of share capital assistance of ₹ 4.17 crore to meet the first installment (₹ 3.85 crore was already provided in the Budget for 2010-11). The Finance Department directed (September 2010) SPINCO to increase its authorized share capital of ₹ 20 crore, as the paid up share capital (₹ 22.90 crore) was more than the authorized share capital.

SPINCO raised (October 2010) the authorized share capital to ₹ 50 crore by amending its bye-laws with the approval of Registrar of Co-operative Societies (RCS) and submitted the proposal to UT Government for release of share capital. The Finance Department directed (November 2010) that Government order be obtained for enhancement of the authorized share capital. But RCS resubmitted (January 2011) the proposal without Government approval contending that under the Puducherry Cooperative Societies Act, 1972, he was the competent authority to give approval to amend the bye-laws for enhancement of the share capital.

The Finance Department, however, opined (February 2011) that enhancement of authorised share capital was hitherto done with the approval of Government which was also accepted by the law Department. Ultimately, the Government order enhancing the authorised share capital was issued on 28 March 2011 and share capital of ₹ 8.02 crore was released on 30 March 2011.

¹² ₹ 11.80 crore term loan, ₹ 8.85 crore investment loan and ₹ 4.98 crore subsidy.

Due to this avoidable delay in obtaining Government order, SPINCO paid the first installment of ₹ 7.83 crore (after adjusting the rebate) only on 5 April 2011 i.e., after a month's delay beyond the due date. As a result, NCDC disallowed the rebate and levied penal interest amounting to ₹ 33.09 lakh which was included in the second installment of ₹ 7.68 crore, due on 5 March 2012.

Though part payment of ₹ 4.15 crore was made to NCDC in October 2011 towards the second installment, RCS approached the UT Government only on 2 March 2012 for additional fund towards the balance payment (₹ 3.40 crore after rebate). The amount was released on 16 March 2012 and paid to NCDC on 20 March 2012, viz., 15 days after the due date. As a result, NCDC demanded (April 2012) further payment of ₹ 13.02 lakh by disallowing the rebate and claiming penal interest against the second installment, which was yet to be paid.

Thus, failure of RCS to obtain Government order in time to increase the share capital during 2010-11 and approaching the Government at the fag end of 2011-12 to meet the balance amount of second instalment resulted in belated release of share capital assistance and consequent delay in payment of instalments. This not only led to foregoing of the rebate but also attracted penalty totaling ₹ 33.09 lakh towards the first installment and liability of ₹ 13.02 lakh in respect of the second instalment.

The matter was referred to Government in September 2012; reply was not received (December 2012).

3.3 Idle expenditure

PUBLIC WORKS DEPARTMENT

3.3.1 Idling of a bridge due to non-completion of the approach roads

Failure of the Public Works Department to handover the land, free of encroachments, for formation of approach roads to a newly constructed bridge resulted in the bridge and road constructed at a cost of ₹ 23.90 crore idling.

Section 15.1 of the Central Public Works Department Manual stipulates that before calling tenders for execution of work, the availability of clear site should be ensured. The Public Works Department (PWD) awarded (December 2004) the work of 'construction of a bridge across the river Ariankuppam and its approach roads on either side of the bridge at Murungapakkam in Puducherry' to a contractor at a cost of ₹ 15.80 crore with instructions to complete the work by July 2006.

Though PWD stated (August 2004) in the pre-bid meeting that the site was free from encumbrances, it handed over only the land required for construction of the bridge at the time of commencement of the work (January 2005) due to encroachments in the land required for approach roads. PWD handed over the land for approach roads only in May 2007, after a delay of one year beyond the scheduled date of completion. However, the Government Poramboke land so handed over for formation of the approach road on the southern side of the bridge still had encroachments.

Meanwhile in September 2006, due to the above mentioned delay and increase in the cost of materials, the contractor demanded higher rates for executing the work, which was rejected (December 2006) by PWD. As the contractor's request (November 2007) for nomination of an arbitrator was also not entertained by PWD, the contractor requested (February 2008) PWD to foreclose the contract. PWD foreclosed (July 2009) the contract and paid ₹ 6.38 crore to the contractor for the value of work done by him.

PWD revised the estimate in October 2009 to ₹ 25.76 crore and the work was split into two portions (i) balance work of construction of the bridge (₹ 17.47 crore) and (ii) formation of approach roads on either side of the bridge (₹ 5.45 crore) and other allied works (₹ 2.84 crore). PWD entrusted (March 2010) the work of completing the bridge to a new contractor at a cost of ₹ 14.25 crore. The bridge work was completed in February 2012 and as of March 2012, the contractor was paid ₹ 13.69 crore. PWD entrusted (January 2011) the work of formation of approach roads to another contractor at a cost ₹ 6.16 crore on the assurance that encroachments on the southern side of the bridge would be cleared in two months time to facilitate formation of the approach road. However, PWD failed to clear the encroachments and the work could not be commenced on a portion (400 metres) of the southern side as of June 2012. The approach roads on the northern side and on a portion of southern side (450 metres out of 850 metres) have been completed in February 2012 at a cost of ₹ 3.83 crore.

It was noticed that the encroachers were provided with alternative land and financial assistance. Despite this, they refused to vacate the land and the department could not evict them. Thus, the work commenced in January 2005 remained incomplete even after seven years, due to the failure of the department to ensure availability of land free from encumbrance before awarding the contract. As a result the approach road could not be completed and the bridge and portion of road constructed at a cost of ₹ 23.90 crore remained idle. Further, the delay also led to avoidable cost overrun of ₹ 10.43¹³ crore due to re-tendering and the old bridge was continued to be used with inconvenience to the Public.

Government stated (November 2012) that efforts were being made to settle encroachers in the alternate site already identified and on completion of this

¹³ ₹ 6.38 crore + ₹ 13.69 crore + ₹ 6.16 crore – ₹ 15.80 crore

activity the bridge would be put to use. It was further stated that the construction work was taken up in anticipation that land acquisition for road portion would be completed when the bridge work reached completion stage.

The reply is not acceptable, as the department should have ensured that the earmarked land was free from encroachment before commencement of the work as envisaged in the manual provision.

3.4 Blocking of funds

EDUCATION DEPARTMENT

PONDICHERRY ENGINEERING COLLEGE

3.4.1 Failure to utilise the grants

Failure of the Principal, Pondicherry Engineering College, to utilise the grants in time for construction of a hostel for Scheduled Caste students.

The General Financial Rules (GFR) stipulate that release of funds should be made only on the basis of viable and specific schemes drawn up in sufficient details by the grantee organisation. As per the Rule 212 of GFR, the utilization certificate for non-recurring grant should be submitted within 12 months of the closure of the financial year by the institution or organization that received the fund.

Directorate of Higher and Technical Education (DHTE), proposed (28 March 2006) to transfer the unspent amount of ₹ 1.25 crore available under the Special Component Plan of 'Perunthalaivar Kamarajar Financial Assistance Scheme'¹⁴ to the scheme 'Development of Pondicherry Engineering College'. The Principal of Pondicherry Engineering College (PEC) sent (29 March 2006) proposal to DHTE seeking release of the amount for creation of basic amenities and additional infrastructure in the college so as to convert it into a Deemed University. As the Planning Department did not agree for diversion of the funds under Special Component Plan for non-SCP purpose, DHTE obtained (31 March 2006) another proposal from the Principal for construction of hostel for the Scheduled Castes/Scheduled Tribes students in the college and released the amount of ₹ 1.25 crore on 31 March 2006. Thus, the amount was released on the last day of 2005-06 essentially to avoid lapse of budgetary allocation.

¹⁴ The scheme meant for release of financial assistance to the students undergoing professional courses in various private unaided professional colleges

The estimate initially prepared for ₹ 3.50 crore was finally reduced to ₹ 1.40 crore on the ground of paucity of funds. Technical sanction was obtained in April 2008 and the lowest tender (₹ 1.46 crore) for the work was approved (October 2008) by the Chief Engineer. PEC, without awarding the work, sought (October 2008) for additional funds of ₹ 53 lakh from DHTE for anticipated extra and substituted items, electrical works, etc. Though the proposal for additional funds were forwarded (December 2008) to the Adi-draavidar Welfare Department (ADW), which is the nodal department for implementation of schemes for the SC/ST under SCP, additional funds were not released. In the meantime, the contractor extended the validity of his tender for several times upto August 2009, and finally requested (September 2009) PEC to refund the earnest money deposit of ₹ 2.29 lakh. PEC refunded the same in October 2009.

The Director, ADW Department made a suggestion in a meeting convened (September 2011) by the Minister for Social Welfare, to increase the accommodation of students in the college hostel from 50 to 120 so as to release additional fund. Accordingly, the Principal made a proposal to construct a hostel for 100 students at an estimated cost of ₹ five crore and requested (September 2011) ADW Department to release additional fund which was still pending for release (July 2012).

Thus, the grant of ₹ 1.25 crore released in March 2006 along with interest earned (₹ 0.50 crore), without getting sufficient details to ensure viability of the scheme, remained unutilized for more than six years outside Government account and the students were forced to stay in excess of capacity in the available hostel rooms. Further, the casual approach of the Principal, PEC, in changing the plan of hostel from time to time led to non-utilisation of the fund and consequent escalation of the estimated cost of hostel from ₹ 1.40 crore (April 2008) to ₹ five crore in 2011.

The matter was referred to Government in September 2012; reply was not received (December 2012).

LOCAL ADMINISTRATION DEPARTMENT

3.4.2 Blocking of Government funds

Failure to conduct soil investigation before preparation of the estimate for work by Puducherry Municipality resulted in blocking of funds of ₹ 89.31 lakh for more than five years.

Under the scheme of 'Financial Assistance to municipalities for creation of infrastructural facilities in Tsunami affected areas', the UT Government released (March 2007) grant-in-aid of ₹ 50 lakh as first installment to the Puducherry Municipality (Municipality) to construct a multipurpose hall at Marapalam, Puducherry. As there was no response to the first four¹⁵ tender calls, the Municipality awarded (November 2009) the work to a contractor, who responded to the fifth call, at a cost of ₹ 101.06 lakh with instruction to complete the work by September 2010.

During commencement of work, it was noticed that soil at the site was unfit to bear the load of the proposed building. Hence, the Municipality engaged (October 2010) a consultant at a cost of ₹ 0.86 lakh to ascertain the strength of soil at the site and to suggest suitable changes in the design. Due to poor bearing capacity of the soil, the consultant recommended (October 2010) for pile foundation instead of open foundation as proposed in the original estimate. Meanwhile, the UT Government released (December 2010) ₹ 39.31 lakh as second installment and ordered the Municipality to meet out the balance expenditure from the Municipality's own fund. As change in the foundation required extra items of work costing an additional amount of ₹ 77.61 lakh, the Commissioner requested (July 2011) the Director of Local Administration Department to seek additional funds from Government or to drop the proposal. As no further decision was taken in this regard, the work was not commenced.

In December 2011, the contractor citing failure of the Municipality to handover the site, sought refund of the Earnest Money Deposit and Performance Guarantee. The Municipality cancelled the work order (February 2012) and revised (March 2012) the estimates for the work to ₹ 211.06 lakh at 2011-12 schedule of rates, which was yet to be submitted to the Government for approval.

Scrutiny of records revealed that the site selected for construction was adjacent to two large water bodies. Despite this, the estimate was prepared with open foundation without conducting soil investigation. The CPWD Manual (Section 2.5.1) stipulates that the authority competent to accord technical sanction shall ensure that the design, specification etc. adopted in the detailed estimate are adequate for the building to last till its desired life. The Superintending Engineer, in disregard to this provision, accorded

¹⁵ 13 July 2007, 31 August 2007, 16 November 2007 and 07 February 2008

technical sanction mechanically based on the defective estimate prepared by the Engineers of Municipality without assessing the actual site condition.

Thus, the above failures led to time over run of 18 months and estimated cost over run of ₹ 1.10 crore as of March 2012. Further, Government funds of ₹ 89.31 lakh was blocked outside the Government account for three to five years and the objective of providing multipurpose hall to the public has not been achieved.

The matter was referred to Government in June 2012; reply was not received (December 2012).

3.5 Regulatory Issue

PUBLIC WORKS DEPARTMENT

3.5.1 Award of work without calling for tenders

3.5.1.1 Introduction

Tendering is a formal invitation of technical and financial quotes from the contractors for specified works/supply of materials etc. The public authorities inviting tenders have the responsibility and accountability to ensure efficiency, economy and transparency; provide fair and equitable treatment to the bidders; promote competition and maintain integrity and public confidence in the tendering process.

Central Public Works Department (CPWD) manual stipulates that normally tenders should be called for all works costing more than ₹ 50,000. In urgent cases or when the interest of the work so demands or where it is more expedient to do so, works may be awarded without inviting tenders i.e. on nomination basis. The Central Vigilance Commission stipulated (July 2007) that tendering process or public auction was a basic requirement for the award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to breach of Article 14 of the constitution guaranteeing right to equality.

The Public Works Department (PWD) of the UT of Puducherry executes construction and maintenance of buildings, roads, water supply and drainage schemes. The Department follows the provisions of CPWD code and manual for execution of works. The Department consists of 12 divisions headed by Executive Engineers (EEs) functioning under the supervisory control of three Superintending Engineers (SEs). The Chief

Engineer (CE) is the technical head of the Department, while the Secretary to Government (Public Works) is the administrative head.

Audit of award of works during 2009-2012 in nine¹⁶ out of 12 divisions conducted between May and August 2012 disclosed the following:

3.5.1.2 Large scale award of works on nomination basis

The total number of works awarded by calling tender and award of works on nomination basis during the period 2009-12 in the nine test checked divisions are given in **Appendix 3.1**. Out of 7,658 works valuing ₹ 1,116.35 crore awarded during the period 2009-2012, 4,350 works valuing ₹ 125.88 crore were awarded on nomination basis and the remaining 3,308 works valuing ₹ 990.47 crore were awarded by inviting tenders.

Scrutiny of the records revealed that in four divisions¹⁷, out of 3,668 works involving ₹ 393.17 crore, 3,217 works costing ₹ 87.01 crore (87.70 *per cent*) were awarded on nomination basis and the remaining 451 works costing ₹ 306.16 crore (12.30 *per cent*) were awarded after calling tenders.

3.5.1.3 Award of works on nomination basis in excess of the prescribed limit

The CPWD manual, 2007¹⁸ prescribes annual financial limit as ₹ 45 lakh and ₹ 15 lakh to the SE and EE respectively in addition to their sub-divisional powers for award of work on nomination basis. However, it was noticed that SEs exceeded their financial limit by ₹ 7.67 lakh to ₹ 1,975.84 lakh and EEs exceeded their annual financial limit by ₹ 5.85 lakh to ₹ 215.04 lakh in excess of the prescribed annual financial limit during 2009-12 as shown in **Table 1**.

¹⁶ Special Buildings Division-I and II, Public Health Division, Puducherry, National Highways Division, Buildings and Roads (South) Division, Buildings and Roads (North) Division, Buildings and Roads (Central) Division, Public Works Division, Yanam, and Irrigation and Public Health Division, Karaikal

¹⁷ Special Building Division-I, Puducherry, Buildings and Road Division (Central), Puducherry, Public Works Department, Yanam and Irrigation and Public Health Division, Karaikal

¹⁸ CPWD manual was revised in 2010 and 2012 and proposal to adopt the same is pending with Government

Table 1 – Divisions where SEs/EEs exceeded their annual financial limit

(₹ in lakh)

Sl.No	Division	Value of works sanctioned in excess of annual financial limit during		
		2009-10	2010-11	2011-12
1.	SE, Circle I	34.40	29.79	7.67
2.	SE, Circle II	459.10	1975.84	135.20
3.	SE, Circle III	--	382.14	137.39
4.	EE, B&R (Central), Puducherry	79.77	78.23	74.43
5.	EE, PH Division, Puducherry	22.17	17.58	11.45
6.	EE, Irrigation and PH Division, Karaikal	--	14.17	5.85
7.	EE, PWD, Yanam	140.36	215.04	39.58

(Source: Compiled from details furnished by the Department)

When pointed out by Audit, the EE, Public Health Division, Puducherry stated that strict adherence to the CPWD manual was not possible in water supply and sewerage works and the CPWD manual was meant specially for building works. This reply is not acceptable as the CPWD manual is applicable to all works. In respect of other divisions, reply was not received (August 2012).

3.5.1.4 Splitting of works

The CPWD manual stipulates that Chief Engineer can award works without calling of tenders under his own authority upto ₹ 10 lakh. In case, work is to be awarded without call of tenders in excess of the above prescribed limit, sanction has to be obtained from the next higher authority i.e. Works Board. According to Rule 130 of the General Financial Rules, 2005, for purpose of approval and sanction, a group of works which forms one project shall be considered as one work. Approval or sanction of higher authority to a project which consists of such a group of works should not be avoided on the ground that the cost of each constituent works in the project is within the powers of approval or sanction of the lower authority.

Scrutiny of records in two divisions¹⁹ revealed that the CE split up the following two works with an intention to bring the estimated value of works within his power of acceptance (₹ 10 lakh) and awarded the works without calling for tenders, denying scope for competition and compromising transparency.

(i) Setting up of camp office at Kamban Kalaiarangam

The improvement works estimated to cost ₹ 55.20 lakh in Kamban Kalaiarangam at Puducherry was split up into six works each valued between ₹ 8.22 lakh and ₹ 9.79 lakh. All the six works were commenced

¹⁹ Buildings and Roads (North) Division and Special Buildings Division, Puducherry

and completed during July to November 2009. *Ex post facto* sanctions for the six works each valued between ₹ 8.26 lakh and ₹ 9.95 lakh were issued by Chief Engineer during January and March 2010.

When Audit pointed out that the work was split up to bring the value of work within the powers of the CE, he stated that the work was awarded on nomination basis as it was to be completed in time to accommodate the office of the Union Minister.

This reply is not acceptable as the electrical and acoustic work should have been carried out either by obtaining sanction from the Works Board for awarding the work on nomination basis or the CE should have resorted to competitive bidding. The urgency was also not evident from the fact that the works were carried over a period of five months. Thus, failure of the CE to adhere to the codal provisions denied the scope to get competitive rates and compromising transparency in the procedure followed.

(ii) Modification of a floor into conference hall

Based on the request of Director, Tourism Department to take up the work on nomination basis, the work of converting the second floor of the tourism building into a mini conference-cum-training hall by removing old asbestos cement sheet and providing panel to the halls (total estimate value: ₹ 29.94 lakh), was split into three works each valued between ₹ 9.97 lakh to ₹ 9.98 lakh and awarded to the same contractor. The works were commenced and completed between June 2011 and January 2012. *Ex post facto* sanctions order was yet to be accorded by the Tourism Department. The CE, instead of splitting the work, should have obtained approval of the Works Board treating the work as a single work.

On being pointed out, CE stated (August 2012) that all the three works were different kind and were executed at considerable time intervals.

The reply is not acceptable as the works of 'providing false ceiling' and 'wall paneling' were inter related and awarded to the same contractor. .

The matter was referred to Government in October 2012; reply was not received (December 2012).