CHAPTER IV : WORKS AND MILITARY ENGINEER SERVICES

4.1 Avoidable extra expenditure of ₹1.03 crore due to acceptance of conditional contract

The Chief Engineer Delhi Zone concluded a conditional contract involving uncertain liability without Government approval in violation of Regulations for the Military Engineer Services, which resulted in an avoidable payment of ₹1.03 crore to the Contractor

The Chief Engineer, Delhi Zone (CEDZ) accepted a conditional tender leading to an avoidable payment of ₹1.03 crore to the contractor.

Para 394 of the Regulations for the Military Engineer Services (RMES) stipulates that contracts involving an uncertain liability or any condition of an unusual character should be avoided. However, if it is necessary to include any such provision in a contract, prior approval of the Government of India will be obtained.

The Ministry of Defence (MoD) accorded sanction, in September 2004, for provision of Army Mess and Auditorium at Delhi Cantonment, at an estimated cost of ₹31.78 crore. The CEDZ invited tenders, in September 2004, for the civil works estimated at ₹21.37 crore in the sanction. Tenders received in the first call in January 2005 could not be accepted as the lowest bid of ₹48.03 crore was found to be unreasonably high. Quotations with revised specifications were issued for second call in April 2005 and the lowest tender of M/s Ktech Engineer Builders Co. Pvt Ltd for ₹38.44 crore was considered reasonable. The offer of the tender was valid for 60 days i.e. up to 06 September 2005.

Since the amount of the lowest tender was more than the amount available for the acceptance of the contract, the CEDZ initiated a case on 28 July 2005 for obtaining Financial Concurrence (FC) of the MoD. MoD rejected the proposal in November 2005, and directed to forward the case for revision of cost attributable to market variations of major essential items and within the cost attributable to market variations of major essential items and within the approved specifications. In the meantime, the firm extended the validity of the tender up to December 2005, at the request of CEDZ.

Subsequently, revised sanction for the work was given by MoD on 17 March 2006 at an estimated cost of ₹44.18 crore. Since the validity of the tender has expired by then, the CEDZ approached the tenderer for extending the validity further. The tenderer, while extending the validity up to 25 March 2006, requested the CEDZ for favourable consideration in respect of abnormal increase in the price of cement. Without contesting the contractor's request for favourable consideration in respect of abnormal increase in prices of cement, CEDZ concluded the contract on 22 March 2006 for a lump sum of ₹38.27

crore. The work, commenced in April 2006 and was completed in December 2010. However, during the currency of the contract, claims relating to reimbursement for increase in price of the cement submitted by the contractor were not paid by the CEDZ, resulting in disputes between the two parties. The matter was therefore referred for Arbitration.

The Sole Arbitrator, appointed by the Engineer-in-Chief's Branch, New Delhi, (E-in-C Branch) in November 2008 stated (August 2009) that CEDZ has accepted the contract without any amendment to the contractor's letter which also forms part of acceptance letter and awarded a sum of ₹0.89 crore in favour of the contractor, over and above the escalation amount of ₹15.90 lakh already paid. Though CEDZ was not convinced with the Arbitrator's award yet it failed to file objection within the limitation period of three months. The objection petition filed, in January 2009, for condonation of delay was dismissed by the Court. Accordingly, CEDZ paid a sum of ₹1.03 crore to the contractor, which included an amount of ₹0.14 crore as interest for delay in making the payments by the stipulated timeframe.

The Draft Paragraph was issued to the Ministry in January 2013; their reply was received (August 2013). The Ministry stated in reply, that the Arbitrator had not interpreted the contractor's letter correctly. The contractor had only requested for consideration of price increase of cement and therefore this condition was not absolute in terms of the Contract Act.

The contention of the MoD about incorrect interpretation by the Arbitrator is, however, not acceptable as in case it was felt that the award was unacceptable, CEDZ should have filed an objection against it, as provided under the rules. Failure in filing the objection petition against the Arbitration award within the prescribed limitation period resulted in dismissal of petition by the Court and consequent payment of ₹1.03 crore on account of increase in price of cement.

The case, therefore reveals that conclusion of the contract by CEDZ in violation of Para 394 of RMES and with uncertain liability resulted in undue payment of ₹1.03 crore to the contractor.

4.2 Poor planning resulting in suspension of work and damage to the Government property

Acquisition of land worth ₹9.04 crore, without considering the provision for approach road, resulted in suspension of construction work after incurring ₹3 crore. Assets so created sustained damages worth ₹37 lakh and necessitated preventive works worth ₹1.87 crore.

As per E-in-C's standing orders (1995), while implementing a project under consideration, availability of approach road for construction has to be taken into account, among various other aspects, in the Engineer Appreciation[23].

[23]The purpose of preparing an Engineer Appreciation is to present to the higher authorities any engineering problems that are anticipated in implementing the project under consideration. This facilitates a decision on any engineering problems before work is commenced.

In November 2007, Army acquired land measuring 2063 Kanals and 2 Marlas (257.887 acres) at a cost of ₹9.04 crore for the construction of formation ammunition dump[24] at Kathua in J&K. However, land for approach road was not marked and acquired. The acquired land was accessible from National Highway-1A through an existing 7 Kilometers long approach road with black top surface up to 5.5 km. Remaining 1.5 km was a kachha track on private land.

In September 2008, the Board of Officers comprising representatives of Chief Engineer (CE) Pathankot Zone, recommended the construction of boundary pillars, perimeter fencing and internal roads for security and demarcation of the acquired land. However, the representative of the CE did not bring out non availability of proper approach road to the work site in the Engineer Appreciation, which formed a part of the proceedings of the Board of Officers.

Quarter Master General, Integrated Headquarter of Ministry of Defence (Army), in February 2009, sanctioned the above work at an estimated cost of ₹7.08 crore. CE in July 2009, concluded the contract for ₹5.68 crore and the execution of work commenced in August 2009. In June 2010, when the progress of work was 40 *per cent,* the local population of the village opposed the movement of contractor's vehicles and machinery through their land. Due to the protests, the contractor could not progress with the work with effect from December 2010. Certain items of work, viz. construction of drainage system, causeways, culverts/hume pipe culverts included in the scope could also not be carried out which caused excessive damage to the roads and the retaining walls due to heavy rainfall in July/August 2011. The assessed damage was valued at ₹37 lakh by a Technical Board of Officers, held in November 2011, which also recommended repairs to the damage and remedial measures to prevent further damage at an additional cost of ₹1.87 crore.

In the meantime, due to the protest of the local population of the village, the contractor, in October 2010, proposed to foreclose the contract which was not agreed to by the department. The contractor, thereafter, invoked the arbitration clause and the Arbitrator appointed by E-in-C's branch in December 2010 published its award in December 2012. As per the award, the contract was closed and the contractor was absolved of the defect liability on the ground that the work had remained standstill since December 2010. Further, the CE was directed to go in for a fresh contract for the balance work as and when proper approach road to the site was constructed. The progress of work as in December 2010 was 42 *per cent* and expenditure booked ₹3.00 crore.

It was further observed (May 2013) that the work for construction of the above ammunition dump was proposed for deletion from Annual Major Works Plan for the year 2011-12 as the work site was inaccessible and the land for approach road was yet to be acquired.

[24] "Formation ammunition dump" is a place where provisions are made to stock the ammunitions of various units either under shelter or in open

The matter was referred to the Ministry in January 2013. The Ministry in its reply (May 2013) stated that a State Public Works Department road already existed upto village Mehtapur from where a 1.2 Km long Kachha approach path connected to the defence land. This path had been earlier used for common purposes. Since the approach road existed, the work was sanctioned. It was during the execution of the work that the local population of the village objected to the use of the kachha path and filed a court case.

The reply is however, not acceptable as the Board of Officers held in August 2007 to assess the cost of topographical survey, had clearly stated that the acquired land had to be approached through private and other lands and that the land pocket for approach road had to be decided and acquired at the earliest.

Thus, due to poor planning by the CE, the work on a proposed ammunition dump had to be suspended, apart from damages caused of ₹37 lakh to Government property. An additional burden of ₹1.87 crore on the exchequer, was also necessitated for preventive works. Besides, the Army was deprived of the operational necessity for acquisition of the dump despite incurring an expenditure of ₹9.04 crore on acquisition of land and ₹3 crore towards incomplete work thereon.

4.3 Avoidable extra expenditure due to non installation of meter

Agreement for 33 KV bulk electric supply entailed Chief Engineer, Udhampur Zone to install metering unit at the Military Engineer Services (MES) receiving station. Failure to do so not only resulted in payment for assessed consumption, which was inflated, but also deprived MES of part energy rebate. Consequently, MES incurred an extra expenditure of ₹8.83 crore.

Chief Engineer, Udhampur Zone (CE) entered into an agreement with Jammu and Kashmir State Electricity Department (JKSED), in March 2008, for 33 KV bulk electric supply for a period of five years, at MES receiving station Udhampur. The rate charges for the bulk supply were as per the tariff sanctioned rate, which was subject to further revision by the J&K State Electricity Regulatory Commission (JKSREC) from time to time. The conditions of the agreement stipulated that supply would be registered by a meter, to be provided by the supplier at monthly hire charges. In case supplier failed to provide the meter, the consumer had to provide the meter by himself, in which case no hire charges would be levied. The agreement also clarified that in case the meter becomes inoperative, the supply of energy would be assessed from the readings of previous three months.

We observed (February 2012), that despite the fact that need for a meter was clearly enunciated in the agreement and that the responsibility for providing the same was also specified in unambiguous terms, the CE did not install the meter. The case for installation of the meter was initiated by the Garrison Engineer (Utility) Udhampur (GE) in November 2010, i.e. after more than half

of the terms of agreement was over. Though the matter was also followed up by the GE in February 2011 and September 2011 but the meter was not provided by JKSED. Based on audit observation (February 2012), GE projected a case for provision of their own meter, which was eventually installed in November 2012 at a cost of ₹1.52 lakh. In the absence of the meter, between March 2008 and November 2012, JKSED charged MES for assessed consumption, which was highly inflated. From December 2012 onwards, the charges for electricity consumed were levied on actual consumption. The average actual consumption of electricity from December 2012 to July 2013 was only 781973 units, whereas JKSED had charged MES for assessed consumption ranging from 840000 to 1866550 units, between March 2008 and November 2012. Thus, MES had to pay for the extra units due to non-installation of the meter at their receiving station. The avoidable extra expenditure for the electricity units paid in excess of average actual consumption worked out ₹8.04 crore from March 2008 to November 2012.

Further, as per the tariff orders notified by JKSREC, an energy rebate at a rate of 2.5 and 5 *per cent* for 11 KV and 33 KV respectively was applicable to departments of State and Central Government, defence and para military forces. The rebate, at 5 *per cent*, was however applicable only after installation of Current Transformer/Potential Transformer (CT/PT) which formed a part of metering unit. Since, the meter and CT/PT were not installed at the receiving station up to November 2012, JKSED offered a rebate of 2.5 *per cent* only. As a result, an amount of rebate equivalent to ₹0.79 crore could not be availed. After installation of meter and CT/PT in December 2012, a rebate of five *per cent* over the total energy charges was given by JKSED.

The case therefore reveals that the failure on the part of the CE to safeguard Government interest under the agreement with JKSED resulted in avoidable extra expenditure of ₹8.83 crore.

The matter was referred to the Ministry in April 2013; their reply was awaited (November 2013).

4.4 Inadmissible payment of escalation charges to the contractors

The Chief Engineers concluded works contracts incorporating price variation clause in tender documents based on clarifications issued by Engineer-in-Chief in contravention of provisions of Defence Works Procedure leading to inadmissible payments to the Contractors.

Paragraphs 29 (g) of Defence Works Procedure (DWP) 2007, stipulated that in case of works scheduled to be completed within two years, no escalation, except statutory increases, will be allowed in the contracts for execution of such works. The Approximate Estimates (AE) for such works would be framed accordingly. According to Paragraph 58 (b) of DWP, the AE for such works would be so framed as to cater for escalation for two years. However, the contract would not include any escalation clause except statutory increases.

Contrary to the provisions of DWP, the Engineer-in-Chief (E-in-C) Integrated Headquarters of Ministry of Defence (Army), in May 2008, however, issued clarifications to the lower formations allowing them to take decisions for inclusion of escalation clause in the contracts, depending upon whether or not the element of escalation had been added in the AEs of the jobs with probable date of completion (PDC) of two years or less. In the light of these clarifications, the Chief Engineers (CE) concluded contracts for the execution of the jobs with PDC of up to two years by incorporating escalation clause in the tender documents. However, in November 2011, the E-in-C, based on observations made by the Controller General of Defence Accounts (October 2011) reversed their earlier decision and instructed all the lower formations not to include escalation clause in contracts for jobs with PDC of two years or less. Necessary action for regularization of the payment for escalation already made to the contractors was asked to be taken.

Scrutiny in audit revealed (March/April 2012) that three CEs in the Central, Western and South Western Commands had concluded eight contracts between 2008-09 and 2010-11 incorporating escalation clause against eight different jobs with PDC of two years or less, involving escalation payment of ₹1.39 crore to the contractors. Out of the eight jobs, the element of escalation was explicitly included as a separate item in the AEs of two jobs. In the remaining six jobs, the element of escalation was not distinctly shown in the AEs. E-in-C (April 2012), however, revoked the earlier decision of November 2011 for regularization of inadmissible payments made to the contractors on account of escalation stating that clarification issued in May 2008 was only intended for exceptional circumstances, so as to avoid initial teething problems and not as a matter of routine as DWP-2007 had come into effect from 21 June 2007.

Thus, the case reveals that the CEs concluded contracts by incorporating escalation clause for execution of jobs with PDCs of two years or less, in violation of Paragraph 29(g) and 58 (b) of DWP which disallowed the escalation in contract for execution of work scheduled to be completed within two years. This resulted in inadmissible payments of ₹1.39 crore under contracts concluded by three CEs. Further, the action of the E-in-C revoking the earlier decision for regularization of the above direction amounted to validating the inadmissible payments, which requires detailed investigation and appropriate action.

The matter was referred to the Ministry in May 2013; their reply was awaited (November 2013).