CHAPTER V: BORDER ROADS ORGANISATION

5.1 Avoidable expenditure due to acceptance of contract at higher rates

Director General Border Roads could not accord approval to lowest tender due to delay in concurrence by the Integrated Financial Adviser (IFA) within the validity period. The contract was concluded at a higher rate after third call which resulted in extra expenditure of ₹1.89 crore.

Ministry of Road Transport and Highways in November 2007 revised administrative and financial powers delegated in Border Roads Organization (BRO) which empowered Additional Director General Border Roads (ADGBR) to approve execution of work through contracts in consultation with Integrated Financial Advisor (IFA) Border Roads (BR), where cost of the work is beyond ₹5 crore. Contracts for such works are to be accepted by Chief Engineer (CE) Project. DGBR in May 2011 increased the validity period of tender from 60 days to 120 days from the date of opening of the tenders.

In December 2011, DGBR accorded administrative approval and expenditure sanction for provision of surfacing works on road Katra-Reasi Class-9 to National Highway Double Lane specifications from Km 13.00 to Km 24.188 at an estimated cost of ₹8.60 crore including works valuing ₹6.08 crore required to be executed through contract.

To execute the work, CE (P) Sampark issued tender documents on 15 March 2012 and seven quoted tenders were received on 31 March 2012. The price bids of five tenderers were opened on 20 April 2012 and M/s New Jehlum Construction Company was found the lowest with bidding price of ₹5.80 crore with a validity upto 18 August 2012. As the quoted amount exceeded ₹5 crore, the case was sent to DGBR for approval of ADGBR on 12 May 2012. ADGBR could not accord his approval within the validity period of tender due to certain queries raised and recommendation for retendering by IFA.

Retendering was resorted to in February 2013 against which price bid was opened on 17 May 2013. M/s Jai Laxmi Stone Crusher was found L1 with quoted amount of ₹5.62 crore. The validity of tender was upto 14 September 2013. The case was submitted to DGBR for approval on 27 May 2013. On 1 August 2013, IFA (BR) advised DGBR and CE (P) to negotiate with L1 to explore possibility of reduction in rates. CE (P) replied on 6 August 2013 that as per Central Vigilance Commission guidelines, there should be no post tender negotiation with L1 and sought advice in this regard. On 12 September 2013 IFA returned the proposal and sought confirmation from CFA that rates were reasonable and could be accepted without further negotiation with L1. The tender validity expired on 14 September 2013. The tender could not be accepted within validity period on flawed reasons *i.e.* post tender negotiation *etc.*, with L1.

Consequently, the CE (P) had to re-invite the tender for the work in October 2013. The rates of ₹7.60 crore quoted by M/s Jai Laxmi Stone Crusher on 18 November 2013 were found lowest, which were further reduced to ₹7.51 crore by the firm after negotiation. The case was sent to DGBR for approval in February 2014 for which approval was received in March 2014. The contract was concluded by the CE (P) with the firm for ₹7.51 crore in March 2015, which were higher by ₹1.89 crore than that of L-I rates during 2nd call. The work order was placed on 2 April 2014 with date of completion as1October 2014. The work was under execution and the progress of the work was 72.88 *per cent* as of January 2015.

In reply to Audit query, CE (P) stated (October 2014) that contract was accepted at higher rates due to increase in the cost of bitumen and non-extension of validity period by the tenderer during 2nd call. The reply furnished was not acceptable as the percentage increase in rates in respect of bitumen and Emulsion prevailing at the time of 3rd call was 12.25 *per cent* and 10.52 *per cent* respectively with reference to 2nd call, whereas increase in the amount of the contract was 33.63 *per cent*.

The case thus reveals that the delay in according approval by ADGBR during 1st call and during 2nd call due to indecision in the acceptance of the lowest tender, had resulted in re-tendering for the 3rd time which entailed avoidable extra expenditure of ₹1.89 crore, which would require regularization.

The matter was referred to Ministry in January 2015; their reply is awaited (September 2015).

5.2 Under Recovery of Service Tax from the Contractors

As per notification of Govt. of Jammu & Kashmir Service Tax had not been recovered on the gross value of works in five contracts concluded by the Chief Engineer (Project) Vijayak, which had resulted in under recovery of ₹1.06 crore from the contractors.

Government of Jammu & Kashmir (J&K) in March 2007 and in March 2010 issued notifications imposing service tax on works contract at the rate of 10 *percent* and surcharge equal to five*percent* of the amount of service tax. The Government further clarified in January, 2014 that service tax and surcharge under Jammu & Kashmir General Sales Tax Act, 1962 has to be recovered from the Contractor on the gross value of the contract. It was also clarified by Joint Controller of Defence Accounts (Border Road) Chandigarh in January 2014 that service tax shall be charged on the whole value of the contract irrespective of the source of procurement of materials for the execution of works contract.

We noticed during the audit of Chief Engineer (Project) Vijayak (CE) in September 2014 that the CE had concluded five contracts with two firms during 2012-13 and 2013-14 for re-surfacing of different roads in his area of Command. However, service tax and surcharge at the rate of 10.5 *percent* was recovered from the contractors on the amount of work done less cost of stores issued under Schedule 'B' of the contracts instead of on the entire value of the contracts. This had resulted in under recovery of service tax to the tune of ₹1.06 crore from the contractors.

On this being pointed out in audit the CE in September 2014 stated that orders of 2007 of J&K state had been revised during 2010 which was applicable to the said contracts and linking of all cases with orders of 2007 regarding applicability of service tax was not appropriate. They further stated that appropriate action would be taken in due course of time based on the policies on the subject matter. The contention of the CE is not tenable as notification of 2007 of J&K state regarding imposing of service tax on works contract is still applicable. In the notification of 2010, only rates of service tax were revised from eight*percent* to 10 *percent*. It had also been clarified by the State Government in January 2014 that service tax and surcharge had to be recovered from the contractor on the gross value of the contract.

Recovery of ₹1.06 crore from the contractors on account of service tax was yet (December 2014) to be made.

The case was referred to the Ministry in January 2015; their reply was awaited (September 2015).

5.3 Delay in procurement of Water Truck resulted in extra expenditure

Delay in decision making to select the type of trucks to be procured led to extra expenditure of ₹81 lakh due to revision of rate.

Border Road Development Board (BRDB) in June 2010 approved Annual Procurement Plan (APP) for the year 2010-11 of Headquarters Director General Border Roads (HQDGBR) for procurement of Vehicles/Equipments/Plants which included procurement of 52 Water Trucks 9KL (Truck). The two DG S&D Rate Contract (RC) suppliers *viz*. M/s Tata Motors Limited and M/s Ashok Leyland Ltd quoted ₹8.52 lakh and ₹8.84 lakh for each truck respectively with validity of rates upto 30th June 2010. The DGBR was already holding 519 Tata trucks and nine Ashok Leyland trucks and thus M/s Tata Motors Ltd was the leading supplier of the trucks.

HQ DGBR initiated a case in June 2010 with BRDB to procure the 52 trucks through M/s Ashok Leyland at a total cost of ₹5.74 crore (including transportation charges) on the ground of timely supply of water trucks to Projects to complete their work targets in time as the firm *i.e*. M/s Tata Motors Ltd. had to supply 99 trucks by July 2010 against earlier Supply Order of March 2010 under APP for the year 2009-10, but they had not started delivery (June 2010). While examining the proposal, BRDB in June 2010 directed HQ DGBR to re-submit the case through Integrated Financial Advisor (Boarder Roads) who had objected to procure the Water Trucks from M/S Ashok Leyland being costlier. Thus, HQ DGBR revised their proposal on the last date of validity of RC *i.e*. on 30.6.2010 in favour of M/s Tata Motors, but the same could not be approved by BRDB on 30.6.2010. The RC got expired on

30.06.2010, but it was further extended up to 30.9.2010 in July 2010 by DGS&D.

Contrary to their own decision HQ DGBR in August 2010 again proposed to procure the vehicles from M/s Ashok Leyland which was not approved by the BRDB on the grounds that this involved extra expenditure of ₹16.35 lakh. Thereafter, HQ DGBR on 30.9.2010 *i.e.* last date of validity of RC changed their decision and revised their proposal to procure the 52 trucks from M/s Tata Motors but this time it was not approved for procurement by BRDB for want of justification of the quantity.

In October 2010 DGS&D awarded a fresh RC for the same truck to M/s Tata Motors Ltd. for the period from 14.10.2010 to 30.09.2012 with increased rates of ₹9.76 lakh as against earlier rates of ₹8.52 lakh for each truck. In November 2010, HQ DGBR again initiated a case for procurement of 52 trucks at a total cost of ₹6.43 crore through M/s Tata Motors Ltd. Subsequently, in December 2010 the requirement was enhanced to 82 water trucks by adding 30 more water trucks sanctioned by BRDB in December 2010 for creation of bank of cutting edge equipment in BRO for the construction of Indo China Border Roads (ICBR). Finally, BRDB in February 2011 approved the proposal and a Supply Order for procurement of 82 trucks was placed on M/s Tata Motors Ltd. at a total cost of ₹10.14 crore. The firm completed the delivery by July 2012.

Thus, HQ DGBR were not firm on their decision to select the type of trucks to be procured and changed their choice twice. The proposal remained under correspondence between DGBR & BRDB and opportunity of procurement of water trucks in the extended validity of previous rate contract could not be availed, resulting in an extra expenditure of ₹81 lakh in procurement of 52 trucks at higher rates.

The case was referred to Ministry in March 2015; their reply was awaited (September 2015).