Chapter-8

Award of Contracts

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8.1 Delay in finalisation of contracts

Engineer-in-Chief directed (December 2005) that tenders would be finalised within seven, ten and fifteen days of bid opening dates by EEs/SEs/CEs respectively. Contractors would get their contract bonds registered within seven days of award of works or dates given in acceptance letters, otherwise, tenders would be cancelled and security would be forfeited. It was further directed that divisions would maintain a separate register for recording receipt and approval of tenders. Position of tenders pending for more than 15 days would be informed to SEs concerned on 1st and 16th of every month. Test-check of 234 out of 331 contract bonds finalised by CEs/SEs and 227 out of 471 contracts bonds finalised by EEs disclosed that there were significant delays in finalisation of tenders as shown in the Table 8.1 below:

Table 8.1: Position of delay in finalisation of tenders by CE/SE/EE

Range of delay (in days)	No. of contract bonds	Cost of CBs (₹ in crore)	Maximum delay (in days)
CE/SE level			
Up to 30	97	1,126.52	30
31 to 90	86	1,098.01	90
91 to 180	35	456.20	177
More than 180	16	282.80	717
Total	**234**	**2,963.53**	
EE level			
Up to 30	97	17.59	30
31 to 90	77	22.12	85
91 to 180	36	10.92	180
More than 180	17	3.19	1,731
Total	**227**	**53.82**	

Audit also noticed that in two cases[1] costing ₹ 4.01 crore, negotiation with bidders was carried out after 12 to 15 months of opening of technical bids in SE/CE level contract bonds.

Further, neither registers for recording receipt and approval of tenders were maintained by any division in test-checked districts nor position of tenders pending for more than 15 days was intimated to concerned SEs on 1st and 16th of every month.

Thus, EEs/SEs/CEs failed to follow the instructions of E-in-C in test-checked districts and there were delays of up to 1731 days in finalisation of tenders

[1] Contract bond no 17/SE/15-16 of CD-1, Agra (delay of more than 15 months) and 61/SE/15-16 of CD-1, Unnao.

which ultimately led to delay in completion of works. Further, such extraordinary delays, in finalisation of tenders and award of works to contractors might increase the risk of manipulation of the process of evaluation of bids and award of contract. On one hand, in most of the cases, NITs were invited before AA/FS/TS for stated purpose of speedy execution of works as discussed in paragraph 6.2.1 & 6.2.2 of chapter 6, on the other hand, divisions/circles took inordinately long time in finalising tenders. Further, execution of these highly delayed works by the contractors on old quoted rates, despite revision of SoRs in some cases, indicated that either the estimates could have been considerably inflated by the divisions/circles or the contractors were executing sub-standard works.

Case study 8.1

Construction division-1, Basti invited bids for three works in February 2008 and these bids were opened in March 2008. But, the tenders were finalised and contract bonds were executed with the contractors in December 2012, i e, after a delay of four years and nine months. For all these three works, same two contractors submitted bids and M/S Pragati Construction Company was awarded all the three[2] contracts. Audit observed that against a contract bond costing ₹ 97,663 only, the contractor was paid ₹ 14.07 lakh (1440 *per cent*). Payment details in respect of other two works were not furnished by the division.

The Government did not furnish any specific reply.

8.2 Loss due to less stamp duty charged on Bank guarantee

According to Indian Stamp Act[3], stamp duty at the rate of ₹ five per thousand amounts would be payable on the Bank Guarantee.

During scrutiny of records in test-checked districts, audit noticed that in eight districts, stamp duty was not taken as prescribed, in 29 cases, out of 331 test-checked contract bonds and instead stamp paper of only ₹ 100 was taken. This resulted in loss of ₹ 2.09 lakh ***(Appendix 8.1)*** to the Government.

The Government did not furnish any specific reply.

8.3 Contract bonds not signed

For a contract to be legally binding, it should be signed by both the parties to the contract.

During test-check of records audit observed that in 32 contract bonds costing ₹ 239.78 crore, signatures of Superintending Engineers or contractors or both were missing on the agreement form. In 11 contract bonds (₹ 88.17 crore), SEs had not signed form of agreement and in 11 contract bonds (₹ 110.57 crore), contractors had not signed form of agreement while in ten contract bonds (₹ 41.03 crore) signatures of both SEs and contractors were not

[2] CBs no 163/12-13 for ₹ 97,663, 164/12-13 for ₹ 97,367 and 167/12-13 for ₹ 97,505.
[3] Article 12-ka of Schedule-1-B.

found on the agreement form. Thus, SEs did not perform their responsibilities with due care and did not ensure signing of agreement form by both the parties before awarding the work.

In the absence of signatures in the specified format, authenticity of contract bond was doubtful. Also, the agreements would not be binding and legal in case of default by contractors which could put Government interest at risk.

The Government did not furnish a specific reply.

8.4 Scheduled completion time of works

SE level: Audit observed that there was no instruction or guideline available with the department for fixation of time for completion of works by contractors. As a result, different period of time was fixed by Superintending Engineers for completion of similar nature/quantity of works, as given in Table 8.2 below:

Table 8.2: Detail of time allowed by SEs for completion of works

Sl. No.	Range of cost (In crore)	Number of CBs	Cost of CBs (In crore)	Minimum time allowed (Months)	Maximum time allowed (Months)
1	Less than 1	1874	1,073.31	1	24
2	1 to 5	855	1,592.36	1	24
3	5 to 15	120	1,139.64	1	24
4	15 to 30	64	1,332.16	6	24
5	30 to 50	23	848.67	6	24
6	50 to 100	13	937.64	9	24
7	More than 100	04	612.00	18	30
	Total	**2,953**	**7,535.78**		

(**Source:** Records furnished by divisions)

The table indicated that the time allowed for execution of works of similar value varied widely. Audit noticed, works costing ₹ 30 to 50 crore were given 6 months to 24 months for completion. For instance, for widening/ strengthening of Basti-Kante[4] road (in 24 km length) costing ₹ 31.26 crore, two years completion time was allowed while for widening/strengthening of MDR-60 road[5] (in 22.90 km length) costing ₹ 31.96 crore, only six months completion time was allowed. This indicated that works completion period was decided arbitrarily.

Ministry of Road Transport and Highways fixed (July 2001) five months time for works costing less than ₹ five crore and six months for works costing ₹ five crore to 20 crore. But, audit observed in test-checked districts that UP PWD allowed time for completion of works arbitrarily without following any norms or principle.

EE level: Similarly, position of time allowed by EEs for completion of works during 2011-16 was as given in Table 8.3:

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[4] CB no 158/SE/13-14 of CD-1, Basti.
[5] CB no. 86/SE/15-16 of PD Unnao.

Table 8.3: Detail of time allowed by EEs for completion of works

Sl. No.	Range of cost (In lakh)	Number of CBs	Cost of CBs (In crore)	Minimum time allowed (Days)	Maximum time allowed (Months)
1	Up to 01	183	1.72	06	12
2	01 to 10	31	1.29	04	06
3	10 to 25	71	13.57	27	18
4	25 to 40	186	69.58	13	13
Total		**471**	**86.16**		

(**Source:** Information furnished by divisions)

It is important to note that completion time has a direct bearing on the calculation of bid capacity of the contractors. While calculating bid capacity of a contractor, completion time up to six months is taken as 0.5 and completion time of more than six months is taken as one. As such, increase in completion of time for less than six months to more than six months doubles the bid capacity of the contractors which helps them to get higher value contracts as their bid capacity is increased and possible collusion could not be ruled out.

Government stated in reply (June 2017) that the observations made by audit has been noted for compliance.

Recommendation*: *The Government should prescribe well-defined criteria for fixing time schedule for completion of works in a transparent and objective manner.

8.5 Utilisation of departmental Plants and Machineries

With a view to ensure optimum utilisation of departmental plants and machineries[6] available in various divisions in the State, Engineer-in-Chief directed (August 2001) that condition of utilisation of departmental plant and machinery by the contractors, on hire charge basis, should be included in Schedule-C of tenders.

Scrutiny of records of 2011-16 in test-checked districts revealed that these instructions of E-in-C were not followed by EEs/SEs. As a result, optimum utilisation of departmental plants and machineries available in divisions could not be ensured as discussed in the Table 8.4 below:

Table 8.4: Under-utilisation of departmental plant and machinery

Sl. No.	Name of Machinery	Number	Percentage utilisation	Period	Districts
1.	Hot Mix Plant	21 to 28	43 to 62	2011-16	17 test-checked districts
2.	Road Rollers	159	0		
		71	1 to 25		
		53	25 to 50		
3.	Wet Mix Plant	02	0		
4.	CC/ Mixing Plant	12	0 to 30		

[6] Hot Mix Plant, Road Roller, Tipper, Truck, Water Tanker, Pump set, etc.

Hence, due to the failure of the SEs/EEs to include in the contract the condition of utilisation of departmental Plant & Machinery on hire charges by the contractors, large number of plant and machinery was lying idle in many Public Works divisions/ Circles. This also resulted in loss of potential revenue to government on account of hire charges.

Creation of Depreciation Reserve Fund: The Government created (March 2005) Depreciation Reserve Fund (DRF) to purchase plant and machineries for renewal and replacement of unserviceable plant and machinery, carrying out special repair of plant and machineries and purchase of plant and machineries with latest technology. The Government prescribed that 1.5 *per cent* amount on account of DRF would be added on the total cost of work in every estimate and that the amount would be transferred to the Depreciation Reserve Fund (DRF) for intended purposes. The DRF had a balance of ₹ 38.14 crore in the year 2011-12 which increased to ₹ 62.58 crore in 2015-16.

In the analysis of data relating to DRF and other information furnished by E-in-C pertaining to 2004-16, following issues were noticed:

- During 2013-16, the department incurred expenditure of ₹ 65.40 crore, out of DRF for purchase of Hot Mix Plants (17), Mechanical Paver (23), Loader (27), Roller (34), Tipper (176), Water Tanker (25), Tractor with compressor (51), Bitumen Sprayer (51), etc.

- Audit noticed that department had 21 HMPs in 2012-13 which were not being utilised as per norm. Thus, in these circumstances, purchase of 17 new HMPs without ensuring full utilisation of already existing HMPs, was unjustified. Analysis of utilisation of 11 Hot Mix Plants purchased during 2013-16 revealed that against the departmental norm of 800 hours per year, the performance of these HMPs ranged between 40 hours to 988 hours. Out of 11 HMPs, performance of nine HMPs was below norm and it was below 300 hours for six HMPs. Thus, purchase of these new HMPs and associated machines was unwarranted and resulted in avoidable expenditure of ₹ 65.40 crore. Further, salary paid to staff engaged on these HMPs was also proving to be unfruitful.

Government stated in reply (June 2017) that the observations made by audit has been noted for compliance.

Recommendation*: *The Government should review the working of existing plants and machineries and staff of Electrical & Mechanical cadre and should take appropriate decision for optimum utilisation of departmental resources.

8.6 Splitting of works

While delegating financial powers for technical sanction of estimates and finalisation of contract bonds, the Government ordered (June 1995) that technical sanction of estimates would be issued and contracts would be awarded by EE, SE and CE for works costing up to ₹ 40 lakh, ₹ one crore and more than ₹ one crore amount respectively.

During scrutiny of records pertaining to 2011-16 in test-checked districts, audit noticed that divisional officers of 15 divisions[7] in 11 districts awarded 967 contract bonds amounting to ₹ 61.15 crore by splitting 397 works in parts. Out of these works, two works costing more than ₹ 40 lakh were split in four parts by EEs to bring these works within their financial power and to avoid sanction of higher authorities. The details of splitting of works during 2011-16 are given in ***Appendix 8.2***.

The Government did not furnish a specific reply.

8.7 Works awarded without tendering by EEs

E-in-C, Uttar Pradesh ordered (September 1999 and December 2000) that NITs for works of more than ₹ two lakh shall necessarily be published in newspapers for publicity of the works.

Scrutiny revealed that 183 contract bonds amounting to ₹ 1.72 crore were executed by EEs (cost of each contract bond less than ₹ two lakh) without publishing NITs in newspapers.

Detailed scrutiny of the 183 contract bonds revealed that in 134 cases, the actual payments for the works were more than ₹ two lakh. It was noticed that in nine test-checked districts[8], the payment of ₹ 11.74 crore was made against 134 contract bonds costing ₹ 1.23 crore which ranged up to 6,015 *per cent*[9] more than the value of executed contracts. Since the value of executed contracts in these cases were more than ₹ two lakh, the bids for these contracts should have been invited by publishing NITs in newspapers as envisaged in the order which was not done and in violation of the orders and was irregular.

The Government did not furnish any specific reply.

8.8 Road signage works

For execution of Road Signage and Raised Reflective Pavement Marker (RRPM) works, Engineer-in-Chief directed (July 2006) that road signage works costing more than ₹ two lakh would be executed through contractors registered for road signage works. Category and criteria for registration of contractors for supply and fixing of RRPM would be similar to that for road signage works.

On scrutiny of records in test-checked districts, audit observed that in five works costing ₹ 187.93 crore, works relating to road signage and supply and fixing of RRPM amounting to ₹ 1.25 crore were executed during 2011-16 and

[7] PD, Budaun ; CD (B), Gorakhpur ; CD-3, Jhansi; PD, Basti; PD, Unnao; CD-2, Agra; PD, Gorakhpur; CD-1, Basti; PD, Ghazipur; PD, Gonda; PD, Hardoi; PD, Lucknow; CD-1, Lucknow; CD-2 , Lucknow and CD-2 Mirzapur.

[8] Budaun, Basti, Ghazipur, Gorakhpur, Mainpuri, Mirzapur, Moradabad, Saharanpur and Unnao.

[9] 100 to 200 *per cent*: 11 CBs, 200 to 500 *per cent*: 52 CBs, 500 to 1000 *per cent*: 37 CBs and 1000 to 6015 *per cent*: 34 CBs.

these works were awarded to contractors who were registered for civil works and not for signage works in violation of E-in-C's instructions. Further, provision of road safety works was not included in the estimates of other four works costing ₹ 84.06 crore. As such, quality of works being compromised cannot be ruled out.

The Government did not furnish any specific reply.

8.9 Works executed without sanction of works and allotment of funds

Financial Rules[10] provide that no work shall commence unless a properly detailed design and estimate have been sanctioned; allotment of funds made, and orders for its commencement issued by competent authority.

- Scrutiny of records in test-checked districts revealed that works relating to VIP visits like construction of helipad, barricading, preparation of stage, etc., were executed by Public Works divisions during 2011-16 under the instruction of District Magistrates (DM) or Senior Superintendent of Police (SSP) or Superintendent of Police (SP). Audit noticed that the divisions were still demanding payments for these works from concerned DM or SSP or SP but no funds were provided. Consequently, ₹ 10.93 crore was being shown outstanding against these district authorities for eight months to 29 years as detailed in ***Appendix 8.3***.

- Visits of high dignitaries take place frequently in various districts of the State which require execution of some works. But, no system has been devised for funding of such works.

The State Government accepted (June 2017) the observations and stated that proper procedure would be formulated.

Recommendation*: *Government should put in place a proper system to ensure that expenditure incurred by the Public Works divisions on VIP visits is timely paid and properly accounted for. A time limit should be fixed for sanction of such expenditure after proper verification based on well-defined norms.

8.10 Preparation of incomplete contract bonds

Clause 8.1 under Section 2 of MBD prescribes that bidding documents comprises of NIT, Instruction to Bidders, Qualification Information, conditions of contract, etc. Further, Standard Form of Agreement under Section 8 of MBD lists the documents which form the part of agreement like letter of acceptance, notice to proceed with the works, contractor’s bids, contract data, etc. Thus, it was essential for the divisions to include all these documents in the contract bond before signing and sealing the contract bond.

Scrutiny of records, however, revealed that in all the divisions, documents relating to technical qualification of contractors submitted along with technical bids, were not enclosed with the signed and sealed contract bonds. Audit

[10] Paragraph 375 of Financial Handbook Vol VI.

observed that some of these documents like details of equipment, personnel, on-going projects, executed works, experience certificates, etc. were kept in another loose file.

Thus, divisions did not adhere to the provisions of the MBD which adversely affected transparency in contract management.

The Government did not furnish any specific reply.

8.11 Insurance cover not provided by contractors

Clause 13 of General Conditions of contract included in Model Bidding Document (T2) prescribed that the contractor at his cost shall provide, in the joint names of the Employer and the Contractor, insurance cover from the start date to the date of completion, in the amounts and deductibles stated in the Contract Data for the events which are due to the Contractor's risk like loss of or damage to the Works, Plant and Materials; loss of or damage to Equipment; loss of or damage to property and personal injury or death. Insurance cover was also required to be provided from the date of completion to the end of defect liability period for personal injury or death. Insurance policies and certificates were required to be delivered to the Engineer for approval before the completion/start date.

During scrutiny of records in test-checked districts, audit noticed that contractors were required to provide insurance cover of ₹ 7535.78 crore for 2953 contract bonds executed during 2011-16. However, audit observed that insurance cover was not provided by any contractor in test-checked districts except M/S Manisha Projects Pvt. Ltd, Ghaziabad who provided insurance cover of ₹ 47.30 crore for one work[11] in Provincial Division, Sambhal. Therefore, due to failure of higher officers to ensure providing insurance cover to works executed in test-checked districts, contractors were benefitted to the tune of approximately ₹ 1.71 crore[12] during 2011-16 ***(Appendix 8.4)***.

Thus, due to failure of engineers to ensure insurance cover for works, the Government's interest was at risk during this period. Further, it also led to unauthorised aid to the contractors.

The Government did not furnish any specific reply.

8.12 Provisions for purchase of material not adopted

The Government ordered (January 2007) that contract bond, for supply of material, would be constituted on Model Bidding Document-T3.

Audit observed during performance audit that all the divisions in test-checked districts did not constitute contract bonds in the prescribed model contract document T-3. Instead, these divisions placed supply orders for supply of material on the basis of quotations. Test-check of records in test-checked

[11] Contract bond no 56/SE/13-14 for estimated cost of ₹ 47.30 crore of PD, Sambhal, premium paid: ₹ 1.08 lakh.
[12] Calculated on the basis of premium paid by M/S Manisha Projects Pvt. Ltd, Ghaziabad.

districts revealed that 274 supply orders amounting to ₹ 2.60 crore were issued for supply of grit and stone dust during 2011-16 ***(Appendix 8.5)***.

This resulted in lack of competitive rates and loss to the Government on account of stamp duty.

The Government did not furnish any specific reply.

8.13 Deficient maintenance of Contract bond register

It was prescribed that contract bond register would include the information of agreement number and date, name of contractor, name of work, estimated cost, amount of agreement, amount, number and date of security, amount of stamp duty, date of start and completion, voucher number and date of payment.

Audit observed during scrutiny of records that contract bond register was not maintained by divisions in prescribed format. It was noticed that many important columns like estimated cost of work, detail of security deposited by the contractors, and position of final payment were not opened and thus no information regarding these columns were filled. Due to this, audit could not verify the correctness of such information.

The Government did not furnish any specific reply.