

Chapter III

Contract and Project Management

Brief snapshot of the chapter:

- The Company did not take cognizance of the Government order for obtaining additional performance guarantee and therefore, did not collect additional performance guarantee amounting to ₹ 75.30 crore for a contract executed below 11.5 *per cent* of the estimated cost.
- Plant & Machineries advance amounting to ₹ 31.74 crore was irregularly disbursed to the contractor though the contractor already owned these plant & machineries.
- The contractor was irregularly paid excess amount of ₹ 14.01 crore at a time as provisional payment for material at site under the contract agreement of LKCC-04 overlooking the conditions contained in the contract.
- The Company relieved the licensee towards payment of licence fee of ₹ 115.92 lakh (including GST) despite breach of contract by the licensee.
- The Company approved quantity variations beyond the permissible limit of 15 *per cent* without referring it to the administrative department of the Government.
- A lump sum works of Schedule E (miscellaneous work) costing ₹ 15.75 crore under LKCC-07 was concluded to ₹ 51.40 crore. However, the Company provided the details of items only of ₹ 1.30 crore despite repeated requests made in Audit.
- The Project authorities neither collected valid transit pass before making payment to the contractor nor ensured the deductions of royalty and price of minerals amounting to ₹ 3.16 crore from the contractor.
- The Company did not obtain permit from Geology and Mining Department for extraction of ordinary soil during construction of underground stations and ramps. Further, the Company did not collect royalty from other Government departments for ordinary soil transferred to them and did not deposit the same in Government Account.
- The Company constructed depot on 1.983 hectares of land which was disputed and under litigation without adopting proper safeguards.

Compliance to rules and procedures for tendering and contract management is essential for execution of works in an economic, efficient, effective and transparent manner.

Audit analysed procurement of goods and services at the pre-tender⁹, tender¹⁰ and execution stages by reviewing 21 major work contracts valuing ₹ 4,962.09 crore and 30 miscellaneous work contracts valuing ₹ 25.12 crore related to construction and operation of North-South corridor to assess whether project

⁹ Pre-tender stage includes cost estimation, finalisation of bidding criteria, preparation of Notice Inviting Tender etc.

¹⁰ Tender stage includes opening of bids, evaluation of bids, award of work etc.

execution and contract management was done with due care, economical and in a timely and transparent manner. The significant deficiencies noticed are brought out in the following paragraphs:

3.1 Exclusion of a technically qualified bidder (M/s Gammon India Limited) from financial bid

Audit observed that the Company invited (June 2014) open tender through Interim Consultant DMRC, for contract agreement LKCC-01¹¹ in two packages namely Technical Package and Financial Package. The estimated cost of this work was ₹ 541.00 crore inclusive of all taxes. Twenty-four firms purchased the tender documents, out of which eight firms submitted the bids within the stipulated time.

During the perusal of the minutes of the evaluation committee meeting (9 September 2014), Audit noticed that out of eight bids received, five were considered substantially responsive and generally compliant to technical requirements of the tender conditions as detailed below:

1. M/s Larsen & Toubro Limited
2. M/s Afcons Infrastructure Limited
3. M/s Gammon India Limited
4. M/s Simplex Infrastructures Limited
5. M/s PLL-CR19B (JV)

The above recommendations of the Evaluation Committee on technical bids were accepted by the Managing Director also. Thereafter, minutes of meeting of the Evaluation Committee (September 2014) which met to open the financial offers of the technically responsive bidders, revealed that Board of the Company had approved the opening of financial packages of only four tenderers, out of the five recommended by the Evaluation Committee. M/s Larsen and Toubro Limited got the contract on being found the lowest bidder in the financial bidding.

Audit in this respect further observed that M/s Gammon India Limited was excluded from the tender process at this late stage. The file related to the correspondence between the Company, Interim Consultant (DMRC) and M/s Gammon India Limited on this issue was not provided to Audit.

In reply, the State Government stated (September 2024) that it was a conscious decision of the Board based on past performance of M/s Gammon India Limited at Delhi and Chennai metro project and lack of desirable safety measure and avoidable delay occurred in these projects.

The reply was not acceptable because if the Company had prior information about the unsatisfactory past performance of M/s Gammon India Limited,

¹¹ Construction of elevated viaduct, 8 elevated stations viz. Transport Nagar, Krishna Nagar, Singar nagar, Alambagh, Alambagh Bus Station, Maviaya, Durgapuri and Charbagh Railway Station from chainage 687.140 m to 9171.440 m (excluding construction of special span of approx. 230 m at Maviaya Railway Crossing) and connecting elevated viaduct and ramp to Depot at PAC ground Transport Nagar on North South Corridor of Lucknow Metro at Lucknow.

it should not have allowed M/s Gammon India Limited to participate in the technical bidding stage itself. The required eligibility condition should have been suitably built in the eligibility criteria. Moreover, on being asked by Audit to provide relevant documents in support of the claim that the past performance of M/s Gammon India Limited was not satisfactory, the Company provided (April 2025) clippings of different newspapers containing news regarding collapse of structure of a flyover in 2007 being built by M/s Gammon India Limited in Hyderabad and collapse of a bridge in 2009 being built for DMRCL in Delhi. Thus, the Company relied on the newspapers clippings instead of trying to get direct confirmation from the DMRCL and from concerned authority in Hyderabad. It is pertinent to point out that DMRCL had banned (November 2010) M/s Gammon India Limited for a period of only two years.

3.2 Provision for additional performance guarantee not included in notice inviting tender (NIT)

GoUP Order (June 2012) specifies the provision for taking up the additional performance guarantee from the qualified contractor @ 0.5% per per cent for the contracts executed below 10 per cent of the departmental rates and the additional performance guarantee shall be taken up from the qualified contractor for the contracts executed 10 per cent or more below to the departmental rates, @ 1% per per cent, to safeguard the works.

Scrutiny revealed that the contract agreement LKCC-07 was executed 11.15 per cent below the departmental rates and the work was awarded to M/s L&T Ltd. in November 2016. Performance security along with additional performance guarantee amounting to ₹ 142.83 crore¹² was required to be collected from the contractor before execution of the agreement. The Company received only performance security of ₹ 67.53 crore¹³ in the form of bank guarantee from the contractor before start of work. Audit observed that the Company had not included the provisions of obtaining additional performance guarantee in the contract conditions and notice inviting tender. The details of additional performance guarantee due from the contractor is given in the table-3.1 below:

Table-3.1

Details of additional performance guarantee due from the contractor

Bonded cost ¹⁴ (₹ in crore)	Rates quoted by the contractor Below (%)	Calculation of required additional performance guarantee @ 1% per per cent below (₹ in crore)
675.33	11.15	675.33 X 11.15% = 75.30 crore

(Source: Information provided by UPMRCL)

As evident from above table, ₹ 75.30 crore additional performance guarantee for the contract finalised below the departmental rates 11.15 per cent, was not taken up before signing the contract to safeguard the government interest.

In reply, State Government stated (September 2024) that the Company is a Special Purpose Vehicle (SPV) incorporated under the Companies Act, 1956 as a 50:50 joint venture between the GoI and the GoUP. Therefore, the said circular

¹² Performance guarantee: ₹ 67.53 crore and Additional Performance Guarantee: ₹ 75.30 crore.

¹³ 10 per cent of the contract value ₹ 675.33 crore.

¹⁴ Bonded cost of a work is the cost of the work as per contract/agreement.

was not binding on the Company and contract conditions were same as being followed by all other metro companies. Moreover, the contract has been successfully completed by the contractor.

The reply was not acceptable because the clause 14.17 of the MoU made with the GoI and GoUP emphasized that the Company shall follow CVC guidelines and the procurement policies/guidelines of GoUP for tenders and contracts. Thus, taking cognizance of the said Government order, the Company should have included the provisions for obtaining additional performance guarantee in their notice inviting tenders for those contracts which were executed below the departmental rates, to safeguard the Government interest.

3.3 Irregular grant of Plant and Machinery advance

As per clause 11.2.2 of GCC and SCC of the contract agreement (LKCC-07), interest free Plant and Machinery advance¹⁵ limited to five *per cent* of the original contract value was payable to the contractor for the plant, equipment and machinery provided the same have reached the site, or in the case of new items meant specifically for the work, firm purchase order has been placed and the invoices received. Clause 11.2.2 of GCC provides that the advance will be given only if the plant/ machinery has been purchased for this contract and not for those which are already in the books of the contractor. Clause 11.2.6 of GCC stipulates that the advances shall be used by the contractor strictly for the purpose of the contract and for the purpose for which they are paid. Under no circumstances, the advances shall be diverted for other purposes. Any such diversion shall be construed as a breach of contract and the contractor shall be asked to return the advances at once and pay interest at 15 *per cent* per annum till the advance is recovered back from him. The contractor shall return the advance and pay the interest in one go without demur.

Scrutiny of records revealed that the project authorities of the Company executed a contract agreement (LKCC-07) valuing ₹ 675.33 crore with M/s L&T Ltd. in November 2016. The contractor applied (March 2017) for plant & machinery advance of ₹ 31.74 crore for machineries/equipment within the prescribed limit of five *per cent* of the contract value as detailed in the table below:

Table-3.2
Details of Plant & Machinery advance to the contractor

(₹ in crore)

Description of machinery	Old/New machinery	Assessed Value	Claimed amount of machinery advance by the contractor (80 <i>per cent</i> of assessed value)
Weigh Bridge-100T-02 No.	New	0.25	-
Certified Assess Value of P&M old equipment as on March 2016	Old	39.42	-
Total amount of old and new Plant & Machinery		39.67	31.74

(Source: Information provided by UPMRCL)

¹⁵ The new plant and machinery shall be valued by the engineer at 80 *per cent* of purchase price, or for old items in working order 80 *per cent* of the depreciated value as assessed by the engineer.

Audit, however, observed that invoices/bills were not made available by the contractor to support the evidence of procurement of plant & machineries. The contractor merely produced assessment certificate of Chartered Accountant (23 March 2017) with respect to machineries/equipment valuing ₹ 39.67 crore available as per books of accounts of the contractor. It indicated that the advances were paid to the contractor for already owned plant & machineries and the advances paid to the contractor was either diverted or utilised for other purposes. Thus, the contractor was extended undue favours for providing plant and machinery advance by the Company.

In reply, the State Government stated (September 2024) that advance was given in accordance with SCC. Under clause 1.5 of GCC, SCC of Contract is above GCC of Contract in order of priority. Thus, there was no violation of contract clause.

The reply was not acceptable though SCC says that plant and machinery advance could have been granted to the contractor but the term of SCC was to be read in conjunction with GCC for granting the advance. Entire clause of GCC was not replaced unless specifically mentioned in SCC against the relevant clause. The disbursement of plant & machineries advances of ₹ 31.74 crore was irregular and undue advantage given to the contractor. Interest @ 15 per cent per annum amounting to ₹ 4.32 crore (*Appendix-III*) is thus recoverable from the contractor.

3.4 Irregular payment for material at site

As per clause 11.3.1 of GCC of contract agreement LKCC-04, a provisional payment on account of main construction materials required for the permanent works, shall be paid on request of the contractor after these materials are brought to site. The payment shall be limited to 80 per cent of the actual value or assessed value of these materials and the total of such provisional payment on account of construction materials at a time shall be limited to three per cent of original contract value or likely average consumption of such materials for three months, whichever is less and at any time the total outstanding provisional payment against materials at site shall not exceed four per cent of the original contract value.

Scrutiny of records revealed that the Company executed (September 2015) a contract agreement (LKCC-04) with M/s Canon Fasteners valuing ₹ 85.55 crore for civil architectural finishes, water supply, sanitary installation, drainage, external development, firefighting, fire detection and E&M works for eight number elevated stations from Transport Nagar to Charbagh on priority section of N-S Corridor. Audit observed that the Company made provisional payment of ₹ 20.86 crore (80 per cent of the value of works executed) which included payment of ₹ 14.03 crore for the material at site¹⁶ to the contractor as per 4th running bill. However, the maximum admissible provisional payment for material at site to the contractor for the works was only ₹ 3.42 crore (four per cent of the original contract value of ₹ 85.55 crore) and limited to three per cent (₹ 2.57 crore) of contract value at a time as per terms & conditions of

¹⁶ ₹ 6.93 crore for material at site as per BOQ items and ₹ 7.10 crore for material at site as per extra items.

the contract agreement. Audit observed that the contractor was irregularly paid excess amount of ₹ 14.01 crore at a time which was contrary to the provisions of contract conditions of LKCC-04 works (*Appendix-IV*).

In reply, the State Government stated (September 2024) that Clause 17.2 deals with the claim. The payment was not for material at site but part payment of material component of finished item to avoid further litigation for legitimate payment of contractor. The payment was not made under Clause 11.3.1 but under Clause 17.2. The audit was erroneously interpreting that Clause 17 was only for claims to be settled in case of disputes, conciliation and arbitration. Clause 17.1 states that if the contractor intends to claim any additional payment under any clause of these Conditions or otherwise, the Contractor shall give notice to the Engineer and in any event within 28 days of the start of the event giving rise to the claim. Thus, Clause 17.2 is not only for claims to be settled in case of disputes, conciliation and arbitration but in any event within 28 days of the start of the event giving rise to the claim. As payment was made for material component of finished item and payment for remaining component made after completion of finished item, there is no excess payment.

The reply was not acceptable because Clause 17.2 of GCC did not provide for payment of material at site. The clause states the procedure for claims to be settled in case of disputes, conciliation and arbitration. Whereas, the Clause 11.3.1 of GCC stipulates the provision for payment of material at site. The Government contention was not correct because in 4th running bill the payment was made for the material component and not for the finished items. As per clause 11.3.1 maximum upto four *per cent* of the original contract at any time or limited to three *per cent* of contract value, at a time was allowed to be paid to the contractor for the work as provisional payment for material at site. Thus, the contractor was irregularly paid excess amount of ₹ 14.01 crore¹⁷ at a time which was contrary to the provisions of contract conditions.

3.5 Loss due to short recovery of license fee

The Company awarded (June 2017) a contract for advertisement rights in trains of Metro Phase-1A (N-S Corridor) comprising of 22.88 kilometres and 21 stations to M/s Abhi Advertising, Godaulia, Varanasi (the Licensee) at a license fee of ₹ 1,25,555 per train set (consisting four coaches) per month. License fee was payable in advance on quarterly basis, 15 days prior to the end of running quarter as per Clause 6.5 of the contract agreement. Licensee was to pay interest of 24 *per cent* per annum in case of payment of license fee and other dues after due date. As per Clause 6.9.1 of the contract agreement, interest was to be charged for the full month if payment by due date was defaulted and would continue to accrue on compounding basis until license fee and other dues were finally paid.

As per clause 6.2 of the contract agreement, the trains from depot shall be handed over after due acknowledgment from the concerned depot in-charge as

¹⁷ Payment of material at site advance was made in 1st and 2nd running bill of ₹ 2.50 crore and ₹ 2.57 crore respectively (as per the provisions in each time) and recoveries (₹ 1.67 crore) with outstanding (₹ 3.40 crore) were made by the Company before 4th running bill. The contractor was eligible for the advance only ₹ 0.02 crore.

per the prescribed pro-forma. Clause 3.5 of the agreement provided that there may be maximum 20 trains in the depot for availability of advertisement spaces.

The Company handed over 12 train sets in February 2019¹⁸ to the Licensee. The trains were taken over (March 2019) by Licensee from depot without payment of licence fee in advance. The Company invoiced¹⁹ ₹ 115.92 lakh license fee with GST for advertising rights of 12 train sets for the period April 2019 to October 2019. However, the Licensee did not pay the license fee and informed (September 2019) the Company that market scenario was not encouraging enough to cater the advertisement inventory of all these 20 train sets and requested to hand over 12 train sets with effect from the taking over date. The Company did not accept (October 2019) request of the licensee as no such clause provisioned in the license agreement and advised the licensee to clear all pending dues as per invoices issued on the basis of billing cycle of the contract. Later, the Company terminated (October 2019) the agreement and forfeited security deposit amounting to ₹ 22.60 lakh of the licensee. On the other hand, it agreed (May 2021) with the contention of the licensee as well that 12 train sets were not utilised for advertising purpose and decided to issue credit notes²⁰ worth ₹ 98.24 lakh to the Licensee excluding GST. Thus, the Licensee was relieved towards payment of ₹ 115.92 lakh license fee including GST.

The Company should have recovered remaining ₹ 93.32 (₹115.92 - ₹22.60) lakh license fee including GST with 24 *per cent* per annum interest as per agreement provisions to save its revenue instead of relieving the licensee by issuing credit notes.

In reply, the State Government stated (September 2024) that the advertising agency was utilizing 08 train sets, being run in priority section of N-S corridor of Lucknow Metro, out of the total 20 train sets. Hence, credit notes were issued for train sets 09 to 20.

The reply was not acceptable since as per the license agreement, the licensee was supposed to utilise the full 20 train sets for advertising. Even if the licensee was unable to utilise 12 train sets due to lack of market for advertisement, the licensee was bound to pay license fee for these 12 train sets as per the agreement. Undue benefit was extended by the Company to the licensee by not taking further action to recover remaining amount of the license fee.

3.6 Change in scope of works

3.6.1 Variation

Paragraph 318 of Financial Handbook Vol-VI of GoUP provides that detailed estimates must be prepared for every work proposed to be carried out, followed by Technical Sanction (TS) to the detailed estimate by the competent authority which gives guarantee that the proposals are structurally sound, and the estimates are accurately calculated and based on adequate data. Besides, the

¹⁸ Train sets 1 to 8 were already handed over to the Licensee prior to this.

¹⁹ Invoices Nos. LMRC/PD/2018/147 dated 25 March 2019 & LMRC/PD/2019/58 dated 18 July 2019.

²⁰ A credit note is a note issued by the Company to the licensee, in order to settle the liabilities in the account of the company. (Voucher Nos. LKO/JV/May21/128-129 dated 31 May 2021).

state government issued an order in June 1995, which, among other things stipulates that cases involving variations in the original cost estimates exceeding 15 per cent should be forwarded to the administrative department for approval.

Scrutiny of records of test check contracts revealed that the MD of the company had approved quantity variations/extra items during the construction of following works:

Table-3.3

Details of variations in the quantities and extra items

(₹ in crore)							
Sl. No.	Name of the work	Estimated cost of the work	Bonded cost of the work	Cost of the variations/ extra items	Actual cost of the work Col. (4+5)	Variation against bonded cost (in per cent)	Variation against estimated cost (in per cent)
1	2	3	4	5	6	7	8
1	LKCC-03	145.60	130.51	44.97	175.48	34.46	30.89
2	LKCC-04	96.85	85.55	25.86	111.41	30.23	26.76
3	LKCC-09	95.25	80.94	26.04	106.98	32.18	27.34
Total		337.70	297	96.87	393.87		

(Source: correspondence files of the contract agreements)

It was evident from above table that the cost of work increased by 27 to 31 per cent to the estimated cost (total estimated cost: ₹ 337.70 crore; increased cost: ₹ 393.87 crore). However, cases of such variations (above 15 per cent to estimated cost) were not forwarded to the administrative department which in case of the Company is Housing & Urban Planning Department, GoUP, for approval. Variations in all three cases were approved by MD of the Company. It is also pertinent to mention that the circumstances or justifications under which these variations occurred in all three contracts were neither documented in the records of Company nor elaborated upon by the MD while sanctioning such substantial deviations beyond the estimated costs. As a result, the rationale behind the approval of the MD of these variations could not be verified.

Scrutiny further revealed that the contract agreement (LKCC-04) executed with M/s Canon Fastner was valuing ₹ 85.55 crore. The works of LKCC-04 were distributed in three schedules²¹. Audit observed that 87 items of work valuing ₹ 19.66 crore were to be executed under Schedule-A. The project authorities of the Company approved variations in the quantities of 28 items valuing ₹ 1.96 crore which were substantially increased ranging between 29 to 2362 per cent. As a result, the cost of these works was also increased more than three times (₹ 6.57 crore) as detailed in *Appendix-V(a)*.

Furthermore, a contract agreement (LKCC-07) was also executed with M/s L&T Ltd. (September 2016) costing ₹ 675.33 crore. The work was distributed in six parts²². Audit analysed and found that there were 112 items of

²¹ Schedule A: bonded cost ₹ 19.66 crore, schedule B: bonded cost ₹ 39.09 crore and schedule C: bonded cost ₹ 26.79 crore.

²² Schedule A: Bonded cost ₹ 15.59 crore, Schedule B: Bonded cost ₹ 506.32 crore, Schedule C: Bonded cost ₹ 86.21 crore, Schedule D: Bonded cost ₹ 24.76 crore, Schedule E: Bonded cost ₹ 15.75 crore and Schedule F: Bonded cost ₹ 26.70 crore.

works to be executed under Schedules A to C. In 30 out of 112 item of works costing ₹ 31.54 crore the variations in quantities were approved by the Company ranging between 26 to 1860 *per cent*. Resultantly, the cost of 30 item of works was increased to ₹ 63.63 crore²³ as detailed in **Appendix-V(b)**. Audit also observed that the estimated and bonded cost²⁴ of the lump sum works of Schedule E (miscellaneous work under DSR-14) was ₹ 15.00 crore and ₹ 15.75 crore respectively. However, the work of Schedule E was concluded to ₹ 51.40 crore and the variations/extra items were approved by the Company. The Company provided the details of items of works of only ₹ 1.30 crore executed under the Schedule E against the final payment of bill of ₹ 51.40 crore despite repeated requests by Audit. Therefore, audit could not ascertain the reasons for huge increase in the cost without complete details of item of works actually executed.

In reply, the State Government stated (September 2024) that the reasonable variations in quantities can be allowed during the execution in terms of the contract. Most of variations mentioned are due to change in Bill of Quantity (BOQ) quantity due to site conditions, where tendered & accepted contractual BOQ rates were used. Further, after execution of work, variation in individual items or the group of items has been dealt as per clause 12.5(ii) (f). The delegation of power under Schedule of Power for all the Metros in India is derived as per General Financial Rules. An MoU was executed (March 2016) between GoI, GoUP and Company. As per Para 15.1 of MoU, the management of the Company vests entirely with the Board of Directors as it is neither a central PSU nor a state PSU, but a board governed company. Thus, all variation were dealt as per guidelines issued by Ministry of Finance, GoI, contractual provisions and SOPs and MoU executed between GoI & GoUP.

The reply was not acceptable because clause 12.5(ii)(f) of the respective contract conditions elaborate the procedure of determining the rates of the quantity executed over and above the contracted quantity. It did not have any relation with the power of sanctioning the variation in the estimated quantity. Further, any variation in the estimated quantity should have been supported by the rationale. However, the MD who had originally approved the estimates later, exercising its delegated power, sanctioned cost variations ranging from 27 *per cent* to 31 *per cent* without providing any rationale. Also, the cumulative variations of 27 *per cent* to 31 *per cent* across the three contracts included variations in certain individual items of work, which were as high as 2362 *per cent*. This was contrary to the principles of transparency and accountability in contract management.

3.6.2 Extra Items

CPWD works manual defines the extra items that are completely new and are in addition to the items contained in the schedule of quantities of the contract. Clause 7.1 of technical standards (for track structure for Metro Railway/MRTS Systems issued by the Railway Board in December 2011) states that the

²³ Bonded cost: ₹ 31.54 crore + variation approved ₹ 32.09 crore = ₹ 63.63 crore.

²⁴ An estimated cost is an approximate calculation of how much something might cost and bonded cost is an agreed cost on which the contractor will execute the work.

derailment guard should be provided inside/outside of running rail on viaduct as well as tunnel and at grade section locations as specified by metro railway. The procedure for safety certification and technical clearance of metro system (February 2015) also envisaged the same provision.

(i) A contract agreement (LKT-5) costing ₹ 99.34 crore and € 0.13 crore was executed (January 2016) with M/s Kalindee Rail Nirman (Engineers) Ltd. for supply, installation, testing and commissioning of Ballastless track of standard gauge of N-S corridor in elevated and underground sections along with ballasted/ballastless tracks in Transport Nagar depot of Lucknow Metro Rail Project Phase-IA. Scrutiny of records revealed that the contractor requested (October 2017) the Company for inclusion of new item viz. 'casting of derailment guard' in tunnel portion of the track. The contractor requested (April 2018) that the derailment guard was not included in the tendered BoQ, hence, the Company may approve the derailment guard work as extra item costing ₹ 3.89 crore²⁵. On recommendation of the General Consultant, the Company agreed upon execution of the casting of derailment guard work as per the technical standard²⁶ issued in December 2011. The Company approved the casting of derailment guard work as extra item which was already known and necessary for execution and paid ₹ 2.00 crore²⁷ to the contractor. Thus, exclusion of the provision of casting of derailment guard in the tendered BoQ deprives the Company from getting, more competitive rates for the work.

In reply, the State Government stated (September 2024) that the estimated quantity of derailment guard could not be worked out during tendering stage in the absence of detailed guidelines which was issued in December 2015 which duly stipulates the locations where the derailment guard is to be provided whereas last date of submission of tender document was 30 September 2015 and thus, could not be incorporated in the schedule of quantity as an item.

The reply was not acceptable because in respect of providing the derailment guard, the metro authorities were required to follow the technical standard for track structure for Metro Railway/MRTS systems as per order issued by Railway Board in December 2011. Besides, in February 2015, Research Designs & Standards Organisation, Ministry of Railways, GoI (RDSO) also issued procedure for safety certification and technical clearance of Metro system which *inter alia* included provision (Para 8) for providing for the derailment guard. In December 2015, RDSO reiterated the provision for derailment guard and included provision for the location of the derailment guard. Hence, provision for providing derailment guard was available even at the time of inviting tenders which should have been included in the original contract.

(ii) Similarly, the project authorities executed (September 2015) a contract agreement with Canon Fasteners (LKCC-04) for civil architectural finishes, water supply sanitary installation, drainage, external development, firefighting, fire-detection and E&M works for eight elevated stations²⁸. The bonded cost of the entire work was ₹ 85.55 crore against the estimated cost of ₹ 96.85 crore.).

²⁵ Contractor offered for laying of 6275 track meters at the rate of ₹ 6196 per track meter.

²⁶ Issued by Railway Board dated 23.12.2011 which envisages the derailment guard should be provided inside/outside of running rail on viaduct as well as tunnel sections which was specified by the Metro Railway.

²⁷ For actual execution of derailment guard 4728.549 track meter at the rate of ₹ 4242.47 per track meter.

²⁸ From Transport Nagar station to Charbagh station.

Audit observed that the entire works valuing ₹ 76.00 crore only was executed against the bonded cost of ₹ 85.55 crore and the works valuing ₹ 35.35 crore (41 per cent of the bonded cost) was executed as extra item. The details are given in the *Appendix-VI*.

In reply, the State Government stated (September 2024) that the tender document was prepared on the basis of estimate and an estimate was an approximate calculation or judgment of the value, number, quantity, or extent of something. Estimate was typically based on available information but not exact, serving as an educated guess or rough assessment. It was the first work of organisation for the station finishing work and estimate was prepared on the basis of available information. The variations have been dealt as per contract clause 12.5 of GCC and payment has been made after approval of competent authority.

The reply was not acceptable because a large number of works sanctioned and executed as extra item indicates that the project authorities of the Company did not determine the specifications of these works correctly, leading to increased cost by ₹ 25.80 crore²⁹.

3.7 Works executed on quotation basis

GCC clause 12.5 (g) of LKCC-06 and LKCC-09 states that in case Engineer introduces an item for which the contract does not contain any rates or prices applicable to the varied works, the rate of such items shall be derived, wherever possible, from rate for similar items available in the Bill of Quantities of the accepted tender. In case this is not possible, the rate may be decided on the basis of cost of materials at current market price.

Test-check of the records disclosed that the non-DSR items/new items of works under contract agreements LKCC-06 and LKCC-09 were carried out by obtaining quotations valuing ₹ 5.34 crore³⁰ (*Appendix-VII*). Audit noticed that these quotations were collected by the contractors themselves and the lowest rate of the quotations were allowed by project authorities of the Company. The Company only ascertained the genuineness of contractor's profit, overhead charges, etc. without verifying the rates at their own level and the rates mentioned in quotation remained same as received from the contractor.

In reply, State Government stated (September 2024) that the Company followed the clause 12.5 (g) of GCC of LKCC-06 and LKCC-09. Thus, the rate for items which were not available in BOQ was determined on the basis of current market rate of material, hire charges of plant & machinery, labour etc. Accordingly, contractor had to submit the supporting documents in support of his claimed rate for Non-DSR items. All the cost proposals submitted by the contractor were independently verified by the executing authorities of the Company for the genuineness of rates and modification were done in analysis of rates if it were found on higher side. The verification of genuineness of rates by Company was same as collection of separate quotation.

²⁹ ₹ 76.00 crore + ₹ 35.35 crore - ₹ 85.55 crore = ₹ 25.80 crore.

³⁰ LKCC-6: ₹ 2.02 crore and LKCC-9: ₹ 3.32 crore.

The fact remains that the company adopted the same rate which was provided by the contractor itself and did not obtain the rates through a market survey or independent assessment in order to ensure the genuineness of the rates. The Company only ascertained the genuineness of contractor's profit, overhead charges, etc.

3.8 Payment of royalty on minerals

3.8.1 Form MM-11 not obtained from contractors

The Uttar Pradesh Minor Minerals Concession Rules, 1963 and the Uttar Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and 2018 stipulate that no person shall transport any mineral without a valid transit pass (Form MM-11). The Government of Uttar Pradesh, in its order dated 15 October 2015 stated that apart from royalty, the price of mineral (ordinarily five times of royalty) be deducted from the contractor's bill and deposited into the treasury, if the contractors do not produce Form MM-11.

Scrutiny of records pertaining to the works under contract agreement LKT-05 revealed that the contractor³¹ brought 24,062.59 cum loose quantities of track ballast material for laying of ballasted track in depot and was paid ₹ 5.90 crore³² for the supplies of ballast made till March 2019. Similarly, 76,102.72 cum concrete works were executed for construction of eight elevated stations under the contract agreement LKCC-07. Audit observed that the project authorities of the Company neither obtained copies of MM-11 of the material consumed for the project to ascertain the minerals brought from the legal quarries nor imposed/deducted royalty and price of minerals as provisioned in the Government order of October 2015. As consumption statement were not provided by the Company, audit could not work out the amount of royalty and price of minerals involved.

Apart from above, 36,611.20 cum coarse sand and sand involving royalty of ₹ 52.59 lakh were also consumed in the LKCC-07 work. However, neither MM-11 forms were obtained from the contractor nor royalty and price of minerals amounting to ₹ 3.16 crore was deducted from the bills of the contractor by the project authorities of the Company, as detailed in the table below:

Table-3.4

Calculation of royalties and price of minerals to be levied for use of coarse sand and sand without submission of Form MM-11

(Amount in ₹)

Item of work in LKCC-07	Name of minerals	Executed quantities (in cu.m.)	Rate of royalty per cu.m.	Royalty amount	Royalty along with five times penalty
Schedule B 13 (a)	Coarse Sand	34,161.62	150.00	51,24,243.00	3,07,45,458.00
Schedule C 1 (a)	Sand	2,449.58	55.00	1,34,726.90	8,08,361.40
Total		36,611.20		52,58,969.90	3,15,53,819.40

(Source: Information provided by UPMRCL)

³¹ Kalindee Rail Nirman (Engineers) Ltd.

³² At the rate of ₹ 2450 per cum for 24062.59 cum quantity.

Thus, project authorities of the Company did not ensure that minerals consumed in the metro works were procured from legitimate source after payment of royalty.

In reply, the State Government stated (September 2014) that as per clause 5.8 of GCC, the contractor shall pay all traffic surcharges and other royalties, licence fees, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials. As the responsibility of payment of duties and royalties lies with contractor, Form MM-11 was not required on part of the Company as it was under the ambit of contractor to supply at location specified by the Company. Further, there are a lot of transactions done by contractor for completion of project, however, all those transactions do not come under purview of the Company as there are separate government departments for ensuring legality and compliance of all those transactions.

The reply was not acceptable because the engineers-in-charge were required to ensure that minerals brought by the contractors and consumed in the works were royalty paid minerals and obtained from legal sources. The project authorities should have deducted royalty and price of minerals from the contractor's bill in cases of non-submission of MM-11 forms by the contractor.

3.8.2 Mining permit not obtained for extraction of ordinary soil

Rule 3 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 envisaged that no person shall undertake mining operations in any area within the State of any minor mineral to which these rules are applicable except under and in accordance with the terms and conditions of mining lease or mining permit granted under these Rules. Royalties on extraction of ordinary soil is payable to Government account at the rate of ₹ 30 per cubic meter as per GoUP notification of January 2016.

Scrutiny of records revealed that four underground stations³³ were constructed under N-S corridor. Audit observed that the Company did not obtain permit for extraction of ordinary soil from Geology and Mining Department of GoUP and excavated 6,39,277.50 cubic meter ordinary soil during construction of underground stations and ramps. The Company disposed off 4,63,054.50 cubic meter excavated ordinary soils on demand made by other Government departments³⁴ after utilizing 1,76,223 cubic meter ordinary soils in Lucknow Metro Rail Project. The disposal plan for excavated ordinary soil was not included in the approved DPR. Audit further noticed that the Company did not collect royalty of ₹ 1.39 crore³⁵ from other Government departments for 4,63,054.50 cubic meter ordinary soil transferred to them and did not deposit the same in Government Account.

In reply, the State Government stated (September 2024) that as per clause 10.4 of the MoU between GoUP and GoI, GoUP exempted Company from its state/local taxes and duties/levies or reimburse the same. Audit is rightly interpreting that royalties for earth are to be paid to the Government but shall be

³³ Chaudhary Charan Singh Airport, Hussainganj, Sachivalaya and Hazratganj.

³⁴ Irrigation Department, Lucknow Development Authority, Lucknow Cantonment Board, etc.

³⁵ 4,63,054.50 cum x ₹ 30 per cum.

the case when Company or its contractor was involved in selling of earth to third party. Here earth was used either by the Company for its own use to reduce the cost of project funded by the Government or given to other Government department to reduce the cost of earth filling to save the cost of Government in filling the Government land. Even if the Company collects the royalties from other Government department, it was to be borne by the Government and again deposited in Government account.

The reply was not acceptable as the excavation of soil was taken up by the Company without obtaining permit from the Geology and Mining Department. Further, as other Government departments were not exempted from payment of royalty, the Company should have collected royalty from them and deposited in Government account.

3.9 Construction of depot on disputed land

Section 378 of Financial Handbook, Vol-VI of GoUP envisaged that no work should be commenced in the land which has not been duly made over by the responsible civil officers.

Scrutiny revealed that the Company procured (August 2016) 21.983 hectares of Government land and 3.813 hectares of private land for construction of depot of Lucknow Metro (N-S Corridor). The GoUP instructed District Magistrate, Lucknow (February 2015) for providing private land to the Company through negotiation with the landowner(s). Audit observed that five private lands measuring 1.983 hectares were disputed and already under litigation. Audit noticed that the Company constructed depot on the acquired land including the disputed lands. Audit further noticed that a tripartite agreement³⁶ was prepared (March 2016) for acquisition of the disputed land with a view to complete Lucknow Metro project timely. Conditions included in the tripartite agreement articulated that the payment would be made to those landowner(s) in whose favour Hon'ble courts shall give decision.

Audit further observed that the tripartite agreement was not registered and not prepared on stamp papers to ensure legal bindings on the concerned parties. The tripartite agreement contained that ₹ 15.78 crore has been deposited in the accounts of Additional District Magistrate (Land Acquisition), Lucknow for compensation of land and would be disbursed to the party after final decision of Hon'ble court. Audit noticed that the tripartite agreement did not possess the signature of all members involved in disputed land as detailed in table below:

³⁶ Additional District Magistrate (Land Acquisition), the Company and all parties related to disputed land.

Table-3.5
Details of tripartite agreement

Gata No.	Area of land (in hectare)	Claimant of land ownership	Amount (₹ in crore)	Signature of disagreed parties on tripartite agreement	Cases in the court
92	0.392	1. Bhurabhai representative of Sant Asharam Ashram 2(a) Rakesh Pal 2(b) Smt. Munni Devi 3(c) Smt. Saroj Agrawal	3.12	Shri Bhurabhai	Civil Court, Lucknow
150/1	0.418	1. Bharabhai 2. Gagan Gurnani	3.32	Bharabhai Gagan Gurnani	Civil Court, Lucknow
150/2	0.506	1. Ambarish 2. Kamlesh	4.03	None of the parties	Board of revenue, Lucknow
150/3	0.506	1. Ambarish 2. Kamlesh	4.03	None of the parties	Board of revenue, Lucknow
119	0.161	1. Ambarish 2. Kamlesh	1.28	None of the parties	Board of revenue, Lucknow
Total	1.983		15.78		

(Source: Information provided by UPMRCL)

As evident from the above table, the tripartite agreement was not legally enforceable on the claimant(s) who did not sign the agreement. In case of disagreement with the terms & conditions and to receive amount as determined by the Company, it may further attract litigations.

In reply, the State Government stated (September 2024) that the tripartite agreement was executed by Additional District Magistrate (Land Acquisition), Lucknow. The agreement was executed between Additional District Magistrate (Land Acquisition), the Company and the party who possesses the disputed land. The tripartite agreement on stamp paper was not required as the ownership of disputed land was not clear. Needless expenditure on stamp duties and registration fee would have to be borne by the Company.

The reply was not acceptable because construction of the depot on the disputed land, which was not properly acquired by the Company, was against the financial rules. Also, the need for preparing agreement was felt due to unclear ownership of disputed land. The tripartite agreement contained that all persons claiming ownership of disputed land would be a party. Hence, a legitimate agreement was to be ensured by the Company for effective legal bindings on the parties to avoid further occurrence of litigation.

3.10 Conclusion

A number of deficiencies in contract management and project execution were noticed. Government orders for obtaining Additional Performance Guarantee was not followed for the execution of below the departmental rates contract to

safeguard the interest of the Company. Irregular payment of plant & machinery advance was made to the contractor for already owned plant & machineries based on assessment certificate prepared by Chartered Accountant. The contractor was irregularly paid excess amount of advance for material at site contrary to the provisions of the contract conditions. Licensee for advertisement rights in trains was relieved from paying license fee. The instances of sanctioning of variations over the estimated cost of works without justifying the circumstances under which these variations had taken place. Variations and extra items were allowed beyond limits. The project authorities did not ensure submission of Form MM-11 by the contractors to ensure that minerals consumed in the metro works were royalty paid and procured from legal sources. The Company constructed depot on 1.983 hectares of land which was disputed and under litigation without adopting proper safeguards.

3.11 Recommendations

3. *The Company should ensure that terms of contract are adhered to and system should be in place to recover dues and irregular/excess payment of advance.*
4. *Responsibility should be fixed where variation & extra items are beyond limits in a contract without sanction from proper delegated authority, thus vitiating the contract integrity.*
5. *The Company should obtain Form MM-11 (transit pass) from the contractors to ensure that the minerals used in the construction works of the metro have been procured from legal sources and royalties etc. are deposited in Government Account.*