CHAPTER X : MINISTRY OF URBAN DEVELOPMENT

Delhi Development Authority

10.1 Avoidable payment

Inclusion of price escalation clause (Clause-10CC) in the lump sum contract resulted in avoidable payment of Rs. 6.41 crore by the Executive Engineer, SED-8, Kalkaji, DDA.

According to the provisions contained in General Financial Rules, lump sum contract should not be entered into except in cases of absolute necessity. Whenever such contracts are entered into, all possible safeguards to protect the interest of the government should invariably be provided for in the conditions of the contract. Provisions contained in CPWD code (Para 11.1.1 & 11.1.2) and CPWD Manual stipulate that lump sum contracts are to be executed in PWD Form no.12 and extra payment or recovery over and above the accepted rate shall be called for only in the event of authorized deviations from the drawings and specifications (as given and/or referred to in the tender documents) in case of execution and not otherwise. In the standard form PWD Form no.12, in which lump sum contracts are to be executed/entered into, there is no provision for payment of cost escalation (Clause 10CC). As per, Appendix-1(Sr.No.32) of CPWD Works Manual, 2003, power of acceptance of tender conditions not in line with the standard conditions vests with the competent authority.

Test check of records of the Executive Engineer, SED-8, Kalkaji, DDA, revealed that the following two works were awarded on lump sum basis. It was, however, seen that in both the contracts the price variation clause (10CC) was included in contravention of the codal provisions mentioned above.

Inclusion of price variation clause resulted in payment of Rs. 6.41 crore as detailed below:-

(Rupees in crore)

Sl. No.	Name of the work	Tendered cost	Stipulated date of start/ completion	Actual date of completion of work	Payment made under clause 10CC
1.	Design and construction of Grade Separator (Four lane) from Dwarka Dwar in Sector 1&7 to ROB on Rewari Railway line including ramps at both ends and foot bridges etc., (Chainage 0.00m to 2147.50 mtrs, section only) including electrification (except ROB from chainage 1786.40 to chainage 1837.50 mtrs)	Rs. 53.76	07-08-2002 06-02-2005	27-12-2006	Rs. 5.02

(Rupees in crore)

Sl. No.	Name of the work	Tendered cost	Stipulated date of start/ completion	Actual date of completion of work	Payment made under clause 10CC
2.	Construction of 45m right of way surface level road from toe of grade separator at Chainage 2147.50m to NH-8 connection (Chainage 6106.38m) on old Delhi Gurgaon Road including underpass, drainage and all electrical work.	Rs. 33.70	08-02-2003 07-02-2005	27-2-2006	Rs. 1.39
	Total				**Rs. 6.41**

DDA stated in April 2007 that the provision of payment under Clause 10CC was made on similar lines as was done in case of works of construction of flyovers in 1998-99 in which instead of form PWD-12, the tenders were invited on lump-sum basis (Design & Built) of PWD Forms-7 and 8 wherein provision of Clause-10CC existed in NIT which was approved by Vice Chairman (VC), DDA on 11 November 1998. The reply is not tenable since approval of VC, DDA was not obtained in these cases. The approval obtained in 1998 was for specific works and would not apply for any future NIT. It was also seen that in five housing works awarded during November 2002 to March 2003, clause 10CC was not included in the lump-sum contracts. Thus, inclusion of clause 10 CC in the above two works resulted in avoidable payment of Rs. 6.41crore (Rs. 5.02 crore + Rs. 1.39 crore).

The matter was referred to the Ministry in September 2007; their reply was awaited as of November 2007.

10.2 Blocking of funds

DDA could not complete a work even three years after the schedule date of completion. As a result, expenditure of Rs. 3.65 crore incurred on the work is yet to yield any benefits.

Section (A) 15.2.13 of CPWD Manual stipulates that it is the duty of departmental authorities to ensure the timely preparation and supply of drawings, the designs of a work and clear site be made available to the contractor before issue of Notice Inviting Tenders (NIT). DDA started work on Development of Land for Integrated Freight Complex (IFC) at Gazipur in 2004. The work involved Construction of peripherial storm water drain in Pocket 'C'. The work was awarded for Rs. 3.31 crore to M/s Anand & Associates. The date of start of work was March 2004 and stipulated date of completion was September 2004.

The work could not start till September 2004 due to non approval of revised design of drains and culverts. In September 2004, the contractor informed DDA that the brick kiln owners were using fly ash in the manufacturing of bricks resulting in non availability of clay bricks in the market and requested DDA to allow him to use fly ash bricks as a substituted item.

It was however seen that the construction work of peripherial storm water drain in pocket – 'C' at IFC Gazipur was not complete as of December 2007, i.e. even after a delay of more than two years for which an amount of Rs. 3.65 crore has since been paid to contractor. The delay in completion of the work is attributable to (i) lack of proper checking of design of drain and culvert – DDA has to redesign the scheme and seek the approval from MCD/DJB as invert level of outfall drain did not tally with the design already approved by DJB/MCD, (ii) non availability of cement, (iii) change of drain section and (iv) slow progress of work. DDA approved fly ash cement bricks as a substitute item of work by attributing the reason like urgency of work, non availability of good quality of clay bricks in the market and in overall interest of DDA as the main reasons. But, the work which was scheduled to be completed in six months, has not yet been completed even after more than three years from the schedule date of completion. As a result an expenditure of Rs. 3.65 crore incurred on the work so far, is yet to yield any benefits.

DDA stated in April 2007 that in such a situation when the kind of bricks as per the specifications in the agreement were not available, the entire brick work was bound to be held up which would have caused avoidable delay in completion of work. Hence, it was in the department's interest as well as for the requirement of work to substitute the agreement items of clay bricks with fly ash bricks. As regards delay in completion of work, it was stated that occurrences of hindrances on various counts were normal part of the process of engineering activities and circumstances beyond the control of department.

The reply is not tenable because DDA failed to provide rectified design and drawings of drains and culverts and cement to the contractor even after delay of more than 610 days. Hence, the main purpose of development of land for IFC within stipulated date of completion was not achieved even after lapse of more than two years resulting in blockade of funds to the tune of Rs. 3.65 crore.

The matter was referred to Ministry in July 2007; their reply was awaited as of November 2007.

10.3 Blocking of funds

Delhi Development Authority invited tenders and awarded a work to a contractor despite stay order of the court on some part of the land and without obtaining forest clearance for removal of trees existing on the site. As the DDA failed to make available the hindrance free site, the work remained incomplete resulting in blocking of Rs. 1.78 crore incurred on incomplete work.

As per provisions contained in Para 4.8 and 15.2.1.3 of CPWD Works Manual 2003 availability of site, funds and approval of local bodies for the plan should be available before issue of the Notice Inviting Tender. Executive Engineer, Northern Division-9, Delhi Development Authority awarded the work of "Providing and laying peripheral sewer line" to M/s Tirupati Cement Products in November,2004 for Rs. 2.73 crore. The work was to be started on 12 November 2004 and completed by 11 August 2005. This work formed part of the main work "Development of 127.76 hectare of land at Dheerpur" for which administrative approval and expenditure sanction for an amount of Rs. 78.27 crore was accorded in December, 1998.

It was seen that while according technical sanction of Rs. 4.97 crore for the above work in February 2004, Chief Engineer (North Zone) was aware of the stay order of the court on some part of the land. Besides, there were a number of trees on the alignment where the sewer line was to be laid. Unencumbered site was thus not available. Yet the Department went ahead with the tender procedure, which was not only in violation of provisions of manual but also reflected gross disregard for ground realities.

Only 65 *per cent* of the work valuing Rs. 1.78 crore could be executed up to October, 2005 there has been no progress towards balance 35 *per cent* work so far as the department failed to make available the site for 35 *per cent* of balance work. As the work executed so far served no purpose, the expenditure of Rs. 1.78 crore resulted in blocking of funds. The work executed so far was of no use, as it would become functional only when the complete network could be laid.

DDA stated in April 2007 that some portion of the site was under court stay and it could not get the stay vacated due to circumstances beyond their control. DDA added that the matter of removal of hindrance of trees in the alignment of sewer lines was consistently taken up with the concerned Forest Division, but despite their best efforts, permission for cutting of trees had not been obtained. As regards delay in completion, it was stated that whenever a project

was taken up, the works were taken up in parts as per standard practice and the balance work would be completed on availability of clear site.

The reply is not convincing as the DDA was aware of the court's stay order as well as existence of trees on the site.

The matter was referred to the Ministry in May 2007; their reply was awaited as of November 2007.

10.4 Unjust enrichment to the contractor due to inadmissible refund of labour cess

Re-imbursement of inadmissible refund of labour cess amounting to Rs. 42.06 lakh on the wrong plea that the agreement on works were drawn prior to the date of notification of Delhi Building and Other Construction Workers' Rules 2002.

As per Building and Other Construction Workers' Welfare (BOCW) Cess Act, 1996, it is mandatory to deduct one *per cent* from the running bill of all contractors towards cess which is utilized for the welfare of construction workers. The Government of NCT of Delhi notified the Delhi Building and Other Construction Workers' (Regulations of Employment and Condition of Service) Rules 2002 on 10 January 2002. The constitution of the Delhi Building and Other Construction Workers' Welfare Board was notified vide notification dated 02 September 2002. DDA issued a circular on 07 February 2006 wherein provisions of this Act and Rules framed there under were circulated to all the Executive Engineers with instructions to deduct cess at the rate of one *per cent* at source from the bills payable to the contractor and to remit the proceeds to the Building and Other Construction Workers' Welfare Board. It was further clarified that these instructions were applicable for future NITs as well in respect of on-going works from 10 January 2002 onwards.

Audit scrutiny of records of two flyover construction works awarded to M/s Afcons Infrastructure Ltd., during the period 2001-02 revealed that an amount of Rs. 47.64 lakh was deducted as labour cess. It was noticed that out of the labour cess amounting to Rs. 47.64 lakh deducted, an amount of Rs. 42.06 lakh was reimbursed to the agency under Clause-38 of the agreement during June 2004 and June 2006 on the ground that the agreement on these works were drawn prior to the date of notification of Delhi Building and Other Construction Workers' Rules 2002 by the Government of NCT of Delhi.

Invoking of clause 38 of the agreement was irregular as the clause comes into play only if fresh tax or levy is imposed by a Statute and BOCW Act is not a levy of tax as has been held by the Delhi High Court. Chief Accounts Officer of DDA in his circular (May 2007) to all Chief Engineers had reiterated that levy of cess is not a tax on account of sale and purchase of goods or for the purposes as specified under Constitution (forty sixth Amendment) Act 1982 and, as such, there arises no liability on the part of DDA to refund the amount to the contractors.

It was also seen that the Chief Engineer (Dwarka) DDA had circulated a clarification on 21 February 2006 wherein it was again reiterated that cess should be recovered from all ongoing contracts from 10 January 2002. Despite clarifications PM Division-II DDA sanctioned reimbursement of cess on 01 May 2006.

Thus, irregular and unnecessary reimbursement of Rs. 42.06 lakh resulted in unjust enrichment of the contractor.

The matter was referred to the Ministry in October 2007; their reply was awaited as of November 2007.

10.5 Unjust enrichment due to irregular allotment of land

Allotment of land to Rotary District Social Welfare Society charging the rates applicable to charitable institutions instead of institutional rate and non-incorporation of clause for providing blood free of charge to 20 *per cent* patients belonging to weaker section of the society resulted in undue benefit to RDSWS and equivalent loss of Rs. 36.93 lakh and loss in ground rent of Rs. 67,581/- for each year for period of lease i.e., 90 years.

Ministry of Urban Development had, vide their order dated 11 November 1994, notified the rates applicable for allotment of land to various categories of organizations. DDA allotted land measuring 1000 sq. mtr. In Tughlakabad Institutional Area to Rotary District Social Welfare Society (RDSWS) for setting up a voluntary blood bank in July 1997. The RDSWS requested (September 1997) DDA to allot an additional 700 sq. mtr. of land adjoining the plot already allotted to the society in June 1998 against which the DDA sanctioned land measuring 510 sq. mtr. in July 1998. While allotting such land, it was decided that since the Rotary Foundation was planning to set up a modern blood bank, they should provide blood free of any charge to 20 *per cent* patients belonging to the weaker sections of the society. It was also decided that a procedure should be formulated whereby the free supply of blood might be jointly monitored both by DDA as well as the Society. The

lease deed of the society was executed in September 2003. The possession of the land was handed over to the Society on 11 February 2002. Construction is yet to commence as on February 2007.

It was seen that the DDA while allotting the land to RDSWS had charged the institutional variant rates of Rs. 104 lakh *per acre*. On representation from the RDSWS in July 1997 this, however, was changed to the Charitable Institutional Rates of Rs. 15 lakh + 69 *per cent* enhancement *per acre* for 1000 sq. mtr. and Rs. 15 lakh + 120 *per cent* enhancement *per acre* for 510 sq. mtr. in August 1997 and July 1998 respectively. As per Urban Development Department's order dated 11 November 1994, land could be allotted under the category-b(v) to charitable institutions which run partially on grants received from the Government. There is nothing on record to indicate that the RDSWS received such grants. Thus, the allotment of land at charitable institutional rate was not justified and resulted in unjust enrichment to the society.

As mentioned earlier while allotting the land to the society, a condition to supply blood free of cost of any charges to 20 *per cent* patients belonging to weaker sections of society was required to be incorporated in the lease deed. However, no such clause was added in the lease deed defeating the very purpose of allotment of land.

Thus, allotment of land on rates applicable to charitable institutions instead of institutional rate and non in-corporation of clause for providing blood free of charge to 20 *per cent* poor patients in the lease deed resulted in extensions of undue benefit to the society which amounted to Rs. 36.93 lakh plus loss of yearly ground rent of Rs. 67,581/- upto the lease period of 90 years. The Blood Bank has not still been established after five years of the allotment of the land.

DDA admitted in November 2007 the facts and stated that a show cause notice for non providing free blood to the poor patients was issued on 20 September 2007. Society had intimated that they were providing free blood to the poor patients.

The reply of DDA was not tenable as blood bank was not constructed as of February 2007 and it is not clear whether the claim of the society that they were providing free blood to the poor patients on a continuing basis was endorsed by DDA after due verification. Further, DDA has not addressed the basic issue of allotment at charitable institutional rate instead of institutional variant rate. The matter was referred to Ministry in September 2007; their reply was awaited as of November 2007.