

## CHAPTER XVIII: DEPARTMENT OF ROAD TRANSPORT AND HIGHWAYS

### National Highways Authority of India

#### 18.1.1 Loss due to payment for additional items of work at a higher rate

**National Highways Authority of India incurred a loss of Rs.2.29 crore by making payment to a contractor for additional items at higher rates, which were recommended by Project Supervision Consultant without obtaining prior approval of the Authority.**

National Highways Authority of India (Authority) as implementing agency of the Government of India for National Highways Development Programme, is entrusted with the task of constructing highways through the civil contractors and Project Supervision Consultants (PSC).

The terms and conditions of the agreement entered into in August 2001 with PSC for Aluva-Angamali section provided that the PSC shall obtain prior approval of the Authority for execution of additional items of work through civil contractors including, *inter alia*, fixation of the rates for these works. The PSC was also required to take a Professional Liability Insurance (PLI) for Rs.1.41 crore being the amount equal to the contract value, valid for a period of five years after completion of the services. Since the project was completed in June 2004 the PLI cover was to be kept valid till June 2009.

Audit observed (April 2006) that during the contract period from 2001 to 2003, though the PSC authorised civil contractor to execute additional items of work (valuing Rs.6.42 crore) but did not obtain the Authority's prior approval for the rates payable for these additional items. The rates fixed by PSC were higher as compared with the schedule of rates of the concerned State Government for similar works, which was used as a bench mark for various other projects of the Authority. It was also observed by Audit that the Authority did not restrict the rates to the scheduled rates in February 2002 at the first instance itself, when the first running bill for additional works executed by the contractor was settled at Rs.18.17 lakh at the recommendation of the PSC instead for Rs.12.95 lakh eligible under the schedule of rates. The Authority went on to release full payments upto December 2002 for additional items\* executed during the period May 2002 to November 2002 at higher rates as recommended by the PSC. That the payments were being made at higher rates first came to the notice of the Authority in January 2003 and instead of resolving the issue with PSC, the Authority withheld Rs.1.42 crore from subsequent bills of civil contractor.

The aggrieved contractor approached (August 2003) Dispute Review Expert who recommended (October 2003) release of pending amounts to the contractor on the ground that the contractual obligation between the Authority and the PSCs were not binding on

\* *Other than Bill of Quantities items*

the contractor. Subsequent appeal (March 2004) by the Authority before Arbitration also did not succeed (December 2004). Thereafter, the Authority released (April 2005) withheld amount of Rs.1.42 crore to the contractor. As a consequence, the Authority incurred a loss of Rs.2.29 crore as the value of additional items worked out to Rs.4.13 crore on the basis of schedule of rates of the State Government as against the payment of Rs.6.42 crore made as per the award given by the Arbitrator. The Authority could not recover the loss from the PSC. Even the PLI cover which expired in March 2005 had not been renewed by the PSC.

The Ministry stated (July 2007) that the PSC's action for fixing the rates without obtaining the prior approval of the Authority was a breach of contract and that it had decided to debar the PSC from participating in the Authority's works for a period of two years.

The reply of the Ministry confirmed the Audit finding. The Authority while failing to restrict the payment to the schedule of rates, could not take any action to reduce its loss through recovery from the PSC due to the non-renewal of the PLI cover.

Thus, due to failure of the Authority in taking timely action for restricting the rates for additional items and ensuring that the PSC took prior approval to the rates, it suffered a loss of Rs.2.29 crore.

#### **18.1.2 Payment of avoidable commitment charges of Rs.1.01 crore**

<b>Delayed decision of the Authority in cancelling the surplus loan resulted in payment of avoidable commitment charges of Rs.1.01 crore.</b>
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The Public Investment Board (PIB) approved the Surat Manor Tollway Project with an investment of Rs.867.25 crore in August 2000. For funding the project, in October 2000, National Highways Authority of India (Authority) signed a loan agreement (agreement) with Asian Development Bank (ADB) for US\$ 180 million. As per section 2.03 of the agreement, the Authority was to pay commitment charges at the rate of 0.75 *per cent per annum* on US\$ 27 million in the first twelve months, US\$ 81 million during second twelve months, US\$ 153 million during the third twelve months and thereafter on the full amount of the loan. If any amount of the loan was cancelled, the amount of each portion of the loan would be reduced in the same proportion as the cancellation bore to the full amount of the loan before such cancellation. The agreement also stipulated that ADB's funding would be restricted to 63 *per cent* of total expenditure on civil works while expenditure on consultancy services, interest and commitment charges would be funded in full.

The cost of the project was revised to Rs.937.30 crore in October 2001 and the amount eligible for funding by ADB was Rs.573.33 crore (US\$ 120.70 million). As a saving of US\$ 59.30 million was envisaged, ADB suggested that these savings could be utilised for enhancing the safety and operating features of the tollway. Accordingly, the Authority proposed (October 2001) additional works of Rs.278.10 crore including civil works and project supervision to improve the safety and utilisation of the above tollway. Out of this estimated cost, the amount eligible for ADB funding was Rs.185.30 crore (US\$ 39 million) and the proposal was sent to PIB for its approval (January 2002).

In the Tripartite Portfolio Review Meeting (TPRM) held in September 2002 between ADB, Authority and the GOI, ADB stated that despite the execution of additional works, there would still be a saving of US\$ 15 to 20 million out of the loan for the project. The GOI also urged the Authority to either utilise the savings in consultation with ADB or proceed to cancel the loan to that extent. The Authority, thereafter submitted a revised proposal for additional works (including the proposal for Highway Traffic Management System (HTMS) at Rs.25 crore - US\$ 5.58 million) for Rs.307 crore.

In April 2004, the Authority sent yet another revised proposal to the competent authority in the Government for Rs.329.60 crore for additional works including work relating to HTMS and to update the costs for the entire project which now stood at Rs.1,331.35 crore. The revised proposal was approved by the competent authority in the Government in October 2004.

In the meantime, in the TPRM held in June 2004, the GOI again advised the Authority to review the status of loan savings. In November 2004, the Authority finally requested the ADB to cancel the loan of US\$ 15 million which was agreed to by ADB in December 2004.

Audit observed (October 2006) that out of US\$ 180 million committed loan, the Authority drew US\$ 149.75 million until the completion of the project (September 2005). The Authority by its own estimate in September 2002 knew that there would be a saving of about US\$ 16.12 million as the Authority was entitled for a loan of US\$ 163.88 million after considering additional works. Despite repeated advise by the GOI and ADB, the Authority neither came up with a viable proposal to use the savings nor surrendered it. This resulted in payment of avoidable commitment charges of Rs.1.01 crore on US\$ 15 million surplus loan for two years from December 2002 to November 2004.

The Ministry stated (July 2007) that the Authority could not anticipate the savings during September 2002 as the proposal moved for approval of PIB/ GOI was Rs.331.67 crore for additional works. The Ministry, further, stated that the estimates were likely to vary by 10 to 15 *per cent* on the basis of actual execution.

The reply was not tenable as the Authority was aware that there would be a saving of US\$ 16.12 million after taking into account the additional works estimated to be executed for Rs.307.08 crore as far back as in September 2002. The proposal for implementation of HTMS was subject to recommendations of an Operational and Maintenance study which was expected to be available in the first quarter of 2005. On ADB pointing out that it would not be possible to implement the HTMS within the proposed loan closing date of December 2005, the proposal was deleted by the Authority. The increase in project cost after September 2002 was mainly due to escalation in costs. The consultant for the project had advised in October 2001 that the quantities of additional works were not expected to vary by more than five to seven *per cent*. Further, the estimates contained a provision of three *per cent* for physical variation as prescribed by the PIB.

Thus, the Authority did not assess the position of the funds required realistically and consequently delayed the decision of surrendering the loan of US\$ 15 million resulting in payment of avoidable commitment charges of Rs.1.01 crore\* .

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\* *Calculated @ Rs.44.80 per US\$*