

Chapter-11

# Contract Variations



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The contract bond is a legal agreement between the contractor and the employer, which defines the scope of the work, cost, timeline and terms and conditions for execution of the work. Any change in the contract scope, cost, timeline and the terms and conditions are not permissible except with the approval of the competent administrative/financial authority and within the ceiling limits laid down under rules. Such post-tender modifications may provide undue benefits to the contractors and therefore, should be restricted to the limits as laid down in the rules, regulation and as per the terms and conditions stipulated in the tender.

Audit, however, noticed large number of such cases while scrutinising records of PWD which are discussed in succeeding paragraphs:

### 11.1 Irregularities in sanction of time-extension

Scrutiny revealed the following issues relating to sanction of time-extension in test-checked districts:

**11.1.1 Time-extension without levy of penalty:** The contract conditions specifically clarified that the period of completion also included rainy season. Further, instructions also provide that no time-extension was to be given on the grounds of sickness of contractor even if supported by medical certificate.

Audit observed during test-check of records in selected districts that public works authorities sanctioned time-extension in 355 works costing ₹ 547.72 crore involving delay of 21 to 1,928 days on grounds such as sickness of contractors, extreme cold, unavailability of labour, heavy rain, damage in Hot Mix Plants, etc. (*Appendix-11.1*) without levying liquidated damages. As the delays in these cases were attributable to the contractors and not to the department, failure to levy liquidated damages of ₹ 52.24 crore in these cases was irregular and amounts to extending undue favour to the contractors.

**11.1.2 Delay in sanction of time-extension:** Contract provides that the Engineer shall decide the extension of completion date within 21 days of the contractor asking for it.

Audit, however, noticed that time-extension was not decided within the stipulated time limit. Delay in deciding on time-extension ranged between 44 to 2,650 days after the scheduled date of completion in 438 contract bonds whose monetary value amounted to ₹ 903.41 crore (*Appendix 11.2*).

**11.1.3 Imposition of insignificant penalty:** MBD prescribes that the contractor shall pay Liquidated Damages (LD) to the employer at the rate of one *per cent* of the contract value per week for delay in completion of work subject to the maximum 10 *per cent* of the contract value.

Test-check of records in selected districts revealed 442 cases of time-extension being granted during 2011-16. Further, examination disclosed that in contravention of stipulated rate of liquidated damages, the divisions in test-checked districts imposed very insignificant amount of liquidated damages in 205 cases (46 per cent) which ranged from 0.008 per cent to two per cent only though the delay was more than 10 weeks and full LD amount of 10 per cent (at the rate of one per cent per week of delay) was chargeable. Hence the contractors were given undue benefit of ₹ 26.54 crore. Further, in 237 contracts valued at ₹ 697.36 crore, no liquidated damages (₹ 68.91 crore) were imposed even though the contractor was responsible for delay exceeding 10 weeks (*Appendix 11.3*). Thus, the contractors were favoured to the extent of ₹ 95.45 crore on account of liquidated damages not being charged.

**11.1.4 Time-extension due to paucity of funds:** Scrutiny of records in test-checked districts revealed that in 119 cases costing ₹ 564.67 crore, delay in completion of works was due to paucity of funds which resulted in sanction of time-extension of up to 761 days as detailed in *Appendix 11.4*. This indicated poor financial management on the part of the department.

#### **11.1.5 Maintenance of important records**

- **Hindrance Register:** In CPWD, stoppage of work due to any hindrance is required to be recorded in a hindrance register maintained by the division. Audit, however, noticed that there was no similar provision in State PWD rules and therefore divisions are not systematically documenting the hindrances caused to the contractor in execution of works. On the other hand, departmental instruction required that the contractor should indicate hindrances in the application form while seeking time extension. As hindrance register was not maintained by the divisions, it was not possible to verify the correctness of hindrances claimed by the contractors in their application seeking extension of time.
- **Application Register:** Audit, further, noticed that applications of contractors for extension of time in most cases were undated and their receipt not recorded by the divisions in any register. In absence of this, it was not possible to examine whether the contractor applied for time extension timely or submitted hindrance claim much later.

#### **11.2 Irregularities in sanction of variation**

Engineer-in-Chief instructed (November 2010) that against any contract bond, excess expenditure in various items should not be sanctioned beyond the financial limit of five per cent, 7.5 per cent and 15 per cent by EEs, SEs and CEs respectively. Thus, variation against an item of a contract bond should be limited to maximum 15 per cent.

Scrutiny of records in test-checked districts revealed that in violation of above mentioned order, variations were sanctioned by CEs/SEs beyond their financial limits. Audit observed that during 2011-16, in 105 cases costing ₹ 35.61 crore, variations amounting to ₹ 20.14 crore (*Appendix 11.5*) were sanctioned irregularly by CEs/SEs beyond the maximum limit of 15 per cent by exceeding their delegated powers. The variation approved by CEs/SEs ranged from 16 per cent to 2,519 per cent of the contracted cost of the item.

Thus, the orders of E-in-C were not being followed by the CEs/SEs during 2011-16. Further, such excessive variations over bill of quantities included in the contracts indicated that either the estimates/bill of quantities prepared before tenders were inaccurate or the authorities inflated the item quantities at the time of execution of works.

### 11.3 Irregularities in sanction of extra-items

Engineer-in-Chief directed (November 2010) that extra-items should be executed in unavoidable circumstances only and it should be limited to 15 per cent of the work cost otherwise concerned EEs and SEs would be held personally responsible for loss of stamp duty and security deposit.

Following major issues were noticed regarding sanction of extra-items:

**11.3.1 Normal items of works executed as extra-items:** Audit observed in test-checked districts that normal items of works such as Wet Mix Macadam (WMM), Dense-graded Bituminous Macadam (DBM) and Bituminous Concrete (BC) which were included in estimates approved by the government, were, however, not included in 92 NITs and so were not included in contract bonds. Later, these items were executed by sanctioning extra-items amounting to ₹ 35.66 crore (*Appendix-11.6*) during 2011-16. Further, in 71 test-checked works costing ₹ 1,898.39 crore, extra-items costing ₹ 138.47 crore were sanctioned during 2011-16. Execution of normal items, which were included in estimates sanctioned by the competent authority, as extra-items, was not proper as:

- Not including these items in tender implies that there was no price discovery of such items through a competitive bidding. These items were got executed by the department as extra item at estimated rates only.
- No reasons were recorded at the time of tendering for exclusion of such items from the tender despite these items being part of the estimated cost approved by government. Hence, there was complete lack of transparency in this practice adopted by the divisions.
- Not including approved items in the tender also results in short deposit of performance security by the contractors. As no extra performance security was taken at the time of execution of these items as extra items, this extended undue favour to the contractors.

#### Case Study 11.1

*The Government approved (November 2014) strengthening work of Sirsaganj-Kishni road km 12 to km 47.400 pertaining to PD, Mainpuri for ₹ 51.21 crore. Technical sanction was issued by CE, Agra zone in December 2014. However, NIT was published in June 2014 by dividing the road in two parts<sup>1</sup>. Two bids of M/S Raj Corporation and M/S Rishiraj Construction were received for both the works. It was seen that rates quoted by both the bidders were 10 per cent & 15 per cent for first part and 15 per*

<sup>1</sup> Km 12 to km 33 and km 33 to 58.400.

cent & 10 per cent above estimated rate respectively for the second part of the road. Contracts<sup>2</sup> were signed for ₹ 15.96 crore and ₹ 16.55 crore at 3.05 per cent and 3.39 per cent respectively below estimated rates after negotiation. Audit observed that extra-items amounting to ₹ 16.04 crore was (50 per cent) sanctioned and executed on this road against the total contract cost of ₹ 32.51 crore. Extra-items which constituted as high as 50.42 per cent of the contract cost were for scrapping of bituminous surface and laying of WMM. These items were normal items of road construction without which road could not have been started. This not only highlights irrational approach of the engineering authorities but also resulted in short deposit of performance security of ₹ 80.20 lakh.

### **Case study-11.2**

Government sanctioned (January 2016) construction of 8.25 km long bypass of SH-33 in district Budaun for ₹ 110.02 crore including land acquisition. SE, Budaun-Pilibhit Circle invited bids in September 2015 for ₹ 43.16 crore. Technical and financial bids were opened even before administrative and financial sanction. Contract bond was executed costing ₹ 22.90 crore only due to change in specifications during technical sanction. However, CE, Bareilly Zone sanctioned extra-items (DBM and BC) of ₹ 21.87 crore (96 per cent) on the day of executing contract bond. Thus, the performance security deposited against the CB was reduced by ₹ 1.09 crore. This also resulted in failure in discovery of competitive rates for works costing ₹ 21.87 crore and undue favour to contractor on account of short deposit of performance security (₹ 1.09 crore).

**11.3.2 Complete works being carried out through extra-items:** Scrutiny of records in test-checked districts revealed that for 27 road works of ₹ 6.53 crore (*Appendix-11.7*), tenders were not invited and these works were executed as extra-items under the contracts for other works. This implied that these 27 works were awarded directly to specific contractors thus extending them undue favours. Further, performance security was not taken in respect of these works and therefore government interest was not protected.

**11.3.3 Excess payment for shifting of material:** During scrutiny of records in Gorakhpur and Basti districts, audit observed that divisions paid ₹ 5.81 crore as extra-items against 53 contract bonds (*Appendix-11.8*) during 2011-16 on account of shifting of stone ballast, etc. As the rate in these contract bonds was on the basis of finished items of works, payment for shifting of material to contractors was inclusive and therefore not permissible. Thus, these divisions incurred avoidable excess expenditure of ₹ 5.81 crore.

**11.3.4** Scrutiny of records also revealed that 20 EEs paid ₹ 128.63 crore on account of extra-items for 846 contract bonds (*Appendix-11.9*) during 2011-16 but sanction of competent authority was not attached with vouchers. Audit noticed that percentage of extra-items was 0.20 per cent to 5,281 per cent of the cost of contract bonds. Thus, in absence of approval of extra-items, payment of ₹ 128.63 crore was irregular.

<sup>2</sup> 30/SE/14-15 for ₹ 15.96 crore with M/S Raj Corporation and 29/SE/14-15 for ₹ 16.55 crore with M/S Rishiraj Construction.

#### 11.4 Delay in completion of works

Every contract bond stipulated a scheduled date for completion of work. Scrutiny of records during performance audit revealed that, out of total 170 test-checked works, only 36 works (28 *per cent*) were completed as per the scheduled completion date and remaining 91 works (72 *per cent*) were completed with a delay of up to 1,739 days.

Audit observed that reasons attributed for delay in completion of works were illness of contractors, excessive rain, extreme cold, protest by villagers, unavailability of labour, land dispute, shortage of funds, etc. It was noticed that time-extension was approved by competent authorities routinely in violation of contract conditions which was not justified and led to unauthorised aid to contractors as discussed in paragraph 11.1.1.

#### 11.5 Completion reports not sent

Engineer-in-Chief directed (November 2010) that after completion of works, divisions would send completion reports to the Government and E-in-C immediately.

Test-check of records of selected works revealed that no completion reports were sent to the Government and E-in-C by any division during 2011-16.

Thus, E-in-C's order was not complied with. As a result, Government did not get up to date position of completion of roads in the State which was essential for monitoring the progress of execution of works.

The Government did not furnish any specific reply to any of the points in this Chapter.



**(P K KATARIA)**

Principal Accountant General (G&SSA)  
Uttar Pradesh

ALLAHABAD  
THE **16 JULY 2017**

**COUNTERSIGNED**



**(SHASHI KANT SHARMA)**

Comptroller and Auditor General of India

NEW DELHI  
THE **17 JUL 2017**

