

## Chapter 3

### Audit of transactions

Audit of transactions of Government departments, their field formations as well as that of autonomous bodies brought out several instances of lapses in management of resources and failure in the observance of the norms of regularity, propriety and economy. These have been presented in the succeeding paragraphs under broad objective heads.

#### 3.1 Non-compliance with rules and regulations

For sound financial administration and financial control, it is essential that expenditure conforms to financial rules, regulations and orders issued by the competent authority. This not only prevents irregularities, misappropriations and frauds, but helps in maintaining good financial discipline. Some of the audit findings on non-compliance with rules and regulations are hereunder:

#### Public Works Department

##### 3.1.1 Irregular award of work and excess expenditure of ₹11.59 crore

**Incorrect working out of justified cost by the Department resulted in irregular award of work amounting to ₹ 234.00 crore. Till January 2012, ₹ 167.10 crore has been paid, which resulted in excess expenditure of ₹ 11.59 crore.**

Para 18.12.1 of CPWD Works Manual, 2003 stipulates that 'it is not enough to accept the lowest tender, but the tendered rates should be reasonable considering the market condition and other factors pertaining to the particular work. Variation upto five *per cent* in amount over the amount worked out at prevalent market rates may be ignored. However, in case of greater emergency, variation upto plus 10 *per cent* might be allowed but in no case rate higher than 10 *per cent* should be accepted. Further, as per schedule 'F' of the agreement, while evaluating the cost of works and for preparation of analysis of rates for DSR items, element of contractor's profit and overhead charges (CP&OH) @ 10 *per cent* was to be adopted.

The Executive Engineer F-112 awarded (May 2007) work of 'Corridor Improvement for Outer Ring Road from IIT Gate to NH-8 intersection' to M/s Afcons at a tendered cost of ₹ 234.00 crore against the estimated cost of ₹ 164.83 crore with stipulated dates of start and completion being May 2007 and February 2009 respectively. As the tendered cost was 41.97 *per cent* above the estimated cost, the department worked out justified cost at ₹ 223.87

crore and accepted the tender on the basis that the work was 4.52 per cent above justified cost.

Audit scrutiny revealed (May 2009) that while preparing the justification statement, the Department adopted the CP&OH @ 37.5 per cent (25 per cent overhead charges on material and labour and further 10 per cent as contractor's profit over and above the material plus labour plus overhead charges) in 38 out of 73 items. However, a maximum of 10 per cent CP&OH was allowable as mentioned in schedule 'F' of the agreement. The correct justified amount worked out in Audit by applying 10 per cent CP&OH was ₹ 197.98 crore and thus the tender should not have been accepted beyond ₹ 217.77 crore. Thus, preparation of incorrect justification statement resulted in justified amount being exaggerated by ₹ 25.89 crore and due to such incorrect calculation, the tendered amount was worked out to be within 5 per cent of justified amount, which was actually 18 per cent above the correct justified amount.

The matter was referred to the Department in May 2009. The Department stated (June 2009) that while preparing detailed estimates; the items, which were not available in DSR<sup>1</sup> were adopted from MORTH<sup>2</sup> standard data book, which provides for 25 per cent overhead charges and 10 per cent contractor's profit. The reply was not tenable in view of the fact that the standard clause 2(x) of GCC<sup>3</sup> provides that all overheads and profits to be added to arrive at the market rates have to be specified in schedule F to the NIT<sup>4</sup>, which in this case were 10 per cent. Thus, if certain items have to be adopted from MORTH, the overheads and profits should not have exceeded 10 per cent.

The department had paid ₹ 167.10 crore to the contractor as of January 2012. Thus, working out of incorrect justified rates by the Department resulted in irregular award of work amounting to ₹ 234.00 crore and excess expenditure of ₹ 11.59<sup>5</sup> crore (January 2012).

### **3.1.2 Extra expenditure of ₹ 2.21 crore due to illegal rescission of contract**

**Unlawful rescission of a contract by the Department resulted in extra expenditure of ₹ 2.21 crore as the balance work was executed at higher rates under new contract.**

Clause 15.2.1.3 of CPWD Manual stipulates that before issue of NIT, availability of site, funds and approval of local bodies to plans and

<sup>1</sup> Delhi Schedule of Rates

<sup>2</sup> Ministry of Road Transport and Highways

<sup>3</sup> General Conditions of Contract

<sup>4</sup> Notice Inviting Tender

<sup>5</sup>  $16.23/234 \times 167.10 = 11.59$

arrangement for issue of drawing above slab at level 2 well in advance of actual requirement, at site as per program of construction, should be ensured.

The Executive Engineer, B-122, PWD, erstwhile Executive Engineer (Civil-I), Delhi College of Engineering (Project) awarded a work namely 'Construction of general pool office building, near Metcalf House' to Contractor-I in April 2004 at a tendered amount of ₹ 16.43 crore. The stipulated dates of start and completion were 03 June 2004 and 02 June 2006 respectively.

A test check of records revealed that the Department could supply only partial structural design for excavation on 23 July 2004 and structural drawings for foundation were issued on 21 September 2004 i.e. after over three months of awarding the contract. As the progress of work was not being maintained by the contractor, the Department issued a notice on 1 June 2005 to the contractor for not maintaining the progress of work without reasonable cause, failure to submit time and progress chart, not-obtaining a labour licence, failure to submit fortnightly labour report and withdrawal of technical staff from site etc. As the contractor did not take any remedial action on issues raised in the notice, department rescinded the contract on 8 July 2005. However, the contractor represented against their order and the same was withdrawn and a fresh show cause notice was issued on 26 July 2005 followed by a fresh rescission order on 5 September 2005. Audit observed that till the date of rescission of contract, the drawings upto ground level only had been issued to the contractor. He had also been paid ₹ 4.59 crore for the work executed upto the stage of rescinding the contract.

It was further noticed that the Chief Engineer, PWD, Zone-3 appointed an arbitrator in May 2005 for this case. In pursuance of Hon'ble High Court's order arbitrator was changed in October 2005, who gave his award (April 2008) for ₹ 46.72 lakh plus interest in favour of the Contractor-I. The Arbitrator in his award held the department responsible for breach of contract as it had failed to supply design and drawings and to sanction the rates for deviated items in stipulated time. The arbitrator held the contractor responsible for delay of only 35 days out of a total delay of 196 days. The remaining delay was held against the department or beyond the control of the Contractor-I. These lapses on the part of the department were the deciding factors for the arbitrator to declare the rescinding of the contract bad in law and to set aside the decision. The arbitrator also ordered the release of performance guarantee and security deposit to the contractor on these very grounds. Consequently, the department accepted the award and in its compliance, paid to the contractor ₹ 56.97 lakh which included ₹ 10.25 lakh as interest.

The department re-invited tenders and awarded the balance work to Contractor-II in August 2006 at tendered amount of ₹ 18.62 crore. The schedule of quantity of new contract had 286 items, out of which 127 items were common in both the contracts. The dates of start and completion were 19

September 2006 and 18 March 2008 respectively. The rates of items received this time were much higher than the rates of the first contract. The work was completed on 30 June 2010. The audit worked out the difference between the cost of common items of the work executed by contractor-II and the cost at rates of contractor-I to be ₹ 2.11 crore.

Thus, the failure of the department in honouring the provisions of the agreement framed by itself and unlawful rescission of contract resulted in extra cost of ₹ 2.11 crore paid to Contractor-II, apart from payment of interest of ₹ 10.25 lakh. It also delayed the schedule of completion of an office building. The building, which was originally scheduled to be completed on 2 June 2006, was actually completed on 30 June 2010 as a result of unjustified rescission of contract.

The department stated (January 2012) that after recession of work, the balance quantity of work of contractor-I did not match with the quantity of contractor-II. The design and scope of several items also changed on higher side. It was also stated that an amount of ₹ 46.30 lakh was paid under clause 10CC to Contractor-I and proportionate amount payable on whole amount of old contract, in case it was not rescinded, worked out to ₹ 2.11 crore.

The reply of the department is not tenable as the Audit considered only those similar items which were left out by contractor-I and executed by contractor-II to calculate the amount of excess expenditure incurred. The contention of the department regarding 10CC is also not acceptable as payment against price escalation is made or recovered considering the stipulated date of completion of work and actual work done up to that date and is not calculated on proportionate basis. Moreover, contractor-II was also entitled for price escalation under clause 10CA as applicable to a contract of a period of 18 months or less.

### **3.2 Audit against propriety/expenditure without justification**

Authorisation of expenditure from public funds has to be guided by the principles of propriety and efficiency of public expenditure. Authorities empowered to incur expenditure are expected to enforce the same vigilance as a person of ordinary prudence would exercise in respect of his own money and should enforce financial order and strict economy at every step. Audit has detected the following instances of impropriety and extra expenditure.

## Directorate of Information and Publicity

### 3.2.1 Extra expenditure of ₹ 1.06 crore due to fixation of unreasonable rates for advertisement on Bus Queue Shelters (BQSS)

**Directorate of Information and Publicity (DIP) placed orders for advertisements at higher rates resulting in extra expenditure of ₹ 1.06 crore and undue benefit to the firm holding exclusive rights on BQSS.**

Directorate of Information and Publicity (DIP) is the nodal agency of the Government of National Capital Territory of Delhi (GNCTD) for releasing advertisements on behalf of the Government. DIP undertakes publicity campaigns of GNCTD under various media modes on Directorate of Advertising & Visual Publicity (DAVP), Government of India rates or on its own rates in case DAVP rates are not available.

The Delhi Transport Corporation (DTC) invited tenders in 2007 for construction of Bus Queue Shelters (BQSS) under Built Operate and Transfer (BOT) scheme I and II for 625 BQSS. Under BOT scheme I, M/s Green Delhi (the H-1 bidder) was awarded the contract who constructed 248 BQSS. As per the terms and conditions of the agreement of July 2007, M/s Green Delhi was required to pay a concession fee of ₹ 93800 per BQS per month to DTC and in turn had exclusive advertisement rights on BQSS constructed by it. On the similar pattern, New Delhi Municipal Council (NDMC) also got constructed BQSS in its area under an agreement with M/s JC Decaux. In this case, M/s JC Decaux was required to pay to NDMC a concession fee of ₹ 9260 or 16 per cent of net revenue per BQS per month whichever is more and in turn had exclusive advertisement rights on these BQSS.

In March 2008, DIP decided to mount its public interest advertising campaigns at strategic sites on BQSS in Delhi and requested M/s Green Delhi, the sole proprietor of DTC BQSS having advertisement rights, to offer its rates alongwith break-up of the cost components. In response, M/s Green Delhi offered its rate as ₹ 1.55 lakh per month. DIP examined the reasonableness of the rates in consultation with the DTC, taking into account the concession fee, printing/flex charges, mounting, installation etc. and submitted the proposal to the Finance Department of GNCTD. The Finance Department concurred to the proposal of the DIP for fixing rate of ₹ 1.50 lakh per BQS per month for BOT scheme I only. However, audit noticed that besides getting its advertisement mounted on BQSS of M/s Green Delhi, DIP placed orders (May 2008 to June 2010) through its empanelled advertising agencies for advertisement on BQSS located in NDMC area, on which M/s JC Decaux had exclusive rights. The orders were placed at the same rates i.e. ₹ 1.50 lakh per BQS per month without examining the reasonableness of the rates as was done in the case of BQSS of M/s Green Delhi. Audit further noticed that DIP

had paid ₹ 2.27 crore to its empanelled advertising agencies<sup>1</sup> on account of its advertisements mounted on BQSS in NDMC area during the period May 2008 to June 2010.

The averment of the audit is that giving advertisement at the rate of ₹ 1.50 lakh on BQSS of M/s JC Decaux in NDMC area was not justified. Had DIP examined the reasonableness of rates, as was done in the case of M/s Green Delhi, it would have considered all the cost elements viz. concession fee, printing/flex charges, mounting, installation etc. The element of concession fee of ₹ 24000 (16 per cent of ₹ 1.50 lakh) was less in this case as compared to ₹ 93800 in case of M/s Green Delhi. DIP, thus, ignored the rule of financial propriety and incurred an excess expenditure of ₹ 1.06 crore<sup>2</sup>.

Thus, placing order for mounting advertisements on BQSS in NDMC area by DIP without ascertaining the reasonableness of rates to be paid resulted in an excess and avoidable expenditure of ₹ 1.06 crore and undue benefit of like amount to the firm holding exclusive rights on the BQSS.

DIP, in its reply stated (February 2012) that the DTC rates fixed for M/s Green Delhi were re-examined and then concurred to by the Finance Department as a DIP rate for BQSS in Delhi especially on strategic locations. It further added that BQSS owned by M/s JC Decaux were also covered by this rate and that issue regarding construction of BQSS on PPP mode and other terms and conditions was a matter between M/s JC Decaux and NDMC.

The reply is not acceptable as the Finance Department concurred to reasonableness of rate for BQSS pertaining to BOT scheme I only, and not as DIP rate for BQSS in Delhi. Audit conclusion that rates were unreasonable is also strengthened by the fact that the rates were reduced from ₹ 1.50 lakh to ₹ 75000 per BQS after June 2010.

### 3.3 Failure of Oversight/Governance

The Government has an obligation to improve the quality of life of the people for which it works towards fulfillment of certain goals in the area of health, education, development and upgradation of infrastructure and public service. However, Audit noticed instances where the funds released by Government for creating public assets for the benefit of the community remained unutilized/blocked and/or proved unfruitful/unproductive due to indecisiveness, lack of administrative oversight and concerted action at various levels. A few such cases have been discussed as follows.

<sup>1</sup> (i) M/s SSC and B Lintas (ii) M/s Crayons and (iii) M/s Pickle

<sup>2</sup> (i) excess payment included in payment of ₹ 1.50 lakh = ₹ 69800 ( i.e. ₹ 93800 - ₹ 24000) and (ii) excess payment included in payment of ₹ 2.27 crore = ₹ 1.06 crore (i.e. ₹ 69800/ ₹ 150000 x ₹ 22700000).

## Public Works Department

### 3.3.1 Infructuous expenditure of ₹ 1.76 crore

#### **Absence of proper planning with assessment of actual requirement and lack of coordination among different divisions of PWD resulted in infructuous expenditure of ₹ 1.76 crore.**

Division F-113 of PWD obtained an Administrative Approval and Expenditure Sanction (AA&ES) of ₹ 226.47 crore based on the preliminary estimates framed by it for the work 'Construction of a grade separator including Foot Over Bridges (FOB) with escalators at the intersection of G.T. Road and Road No. 56 near Apsara Border'. The civil part of the work was awarded to M/s Afcon Infrastructure Limited at ₹ 180.20 crore in August 2008.

Scrutiny of records, however, revealed that the Executive Engineer (Electrical), F-114 awarded (December 2009) a work 'providing 32 Escalators for installation at FOB's at Azadpur, Bhera Enclave, Mangolpuri, Mukarba Chowk, Ghazipur, Shyamlal College, Apsara Border and ISBT Anand Vihar' to M/s Techno Industries Limited (the firm) at a cost of ₹ 19.09 crore. The firm supplied all 32 escalators in August 2010 and a payment of ₹ 13.77 crore had been released to it upto October 2011, which included ₹ 1.76 crore for four escalators allocated to FOBs at Apsara Border. Contrary to this, the Project Manager, F-11 had approved in August 2010 (in the same month in which escalators were supplied) the drawings for the work with provision of lifts in place of escalators, which were provided in preliminary estimates and in AA&ES as well.

Therefore, four escalators, which were specifically supplied for this work could not be utilized there and were lying idle as of January 2012 i.e. even after 17 months of their procurement. Thus, absence of proper planning with assessment of actual requirement and lack of coordination between two divisions of PWD resulted in infructuous expenditure of ₹ 1.76 crore.

Upon being pointed out in audit about the inconsistency, the Executive Engineer, F-114 replied (October 2011) that due to non-availability of proper space, higher authority had decided to provide lifts in place of escalators whereas Executive Engineer, F-113 stated (October 2011) that FOBs had been constructed with provision of lifts as per latest guidelines of United Traffic and Transport Infrastructure (Planning and Engineering) Centre (UTTIPEC). However, the reply neither specifically mentioned the authority who decided the provision of lifts in place of escalators nor indicated the stage at which this decision was taken. As far as availability of proper space is concerned, the contention of PWD lacks conviction as such issues should have been assessed

during the feasibility study and in any case before framing Preliminary Estimates and seeking AA&ES of the competent authority. The stand of PWD that FOBs were constructed as per guidelines of UTTIPEC, is also not acceptable as these guidelines were issued only in July 2011 whereas the provision for escalators was changed with lifts in August 2010 i.e. before almost one year.

The matter was referred to the department in November 2011; its reply was awaited.