CHAPTER V: BORDER ROADS ORGANISATION

5.1 Avoidable extra expenditure due to non-acceptance of lowest tenders

Failure of the Border Roads Organisation to finalise tenders within the validity period of the quotes led to retendering and acceptance of higher rates resulting in additional expenditure of ₹ 3.01 crore on two works.

The Border Roads Regulations, as amended in December 2004, empowered the Director General Border Roads (DGBR) to approve execution of works through contracts in consultation with Integrated Financial Adviser Border Roads (IFA/BR), where the estimated cost of the work is beyond ₹ 5 crore. As per the standard operating procedure (SOP) issued by the Ministry of Road Transport and Highways for execution of such works, the contracts for the works would be concluded by the Project HQ and the Chief Engineer (CE) of the Project concerned should issue tender documents containing the exact specifications/working procedures as sanctioned by the DGBR with concurrence of the IFA/BR. The SOP, however, did not prescribe any time frame for adherence to by all agencies concerned to ensure conclusion of contract action within the validity period of the tenders.

We observed two cases of delay leading to failure in finalising of the L1 tender within validity period and the resultant extra expenditure of ₹ 3.01 crore in execution of works, as narrated in the succeeding paragraphs:

Case-I

The DGBR accorded administrative approval and expenditure sanction in August 2009 for provision of surfacing works on the Zojila-Kargil-Leh Road (NH 1D) to NHDL specifications from km 268 to km 278 at an estimated cost of ₹ 9.37 crore. The CE of the Project Himank received five tenders (September 2009) in response to tender invitation for execution of the above work. After opening the bids (03 October 2009), the CE recommended (06 October 2009) to the DGBR to approve acceptance of the lowest offer of ₹ 6.36 crore quoted by Firm 'X'. DGBR forwarded the case to IFA/BR on 16 October 2009 for concurrence. The IFA returned the case (05 November 2009) for page numbering of file and calling for legible copies of newspaper cuttings of the notice inviting tender and its amendment, attested copies of quotation, vetted comparative statement of tenders, details of validity of acceptance of tender, etc. While the case was pending with the DGBR, the CE informed (10 November 2009) both the DGBR and the IFA that the validity of the tender would expire on 29 November 2009 and that the tenderer might not extend its validity. Though the DGBR resubmitted the case (13 November 2009), the IFA again returned it (30 November 2009) calling for report of Board of Officers on evaluation of unpriced bids and the validity of bids. On 02 December 2009, the L1 tenderer informed the CE about his unwillingness to

extend the validity at the quoted rates. Consequently, the CE had to retender the work and the lowest rate of ₹ 8.39 crore quoted by another firm was approved by the DGBR with concurrence of the IFA (October 2010) and contract signed on 20 October 2010. Thus, due to delay in acceptance of the earlier L1 tender largely attributable to piece meal examination of tender by the IFA, resulted in excess expenditure of ₹ 2.03 crore, an increase of 32 *per cent*, in one year.

Case-II

Director General of Border Roads (DGBR) issued sanction in May 2008 for provision of pavement works on a patch of 11 km road between 30 km and 40 km on NH ID at an estimated cost of ₹ 8.72 crore out of which the work valuing ₹ 7.37 crore was to be carried out through contract. The CE Project Beacon invited tenders on 16 April 2009. On opening of the bids on 23 July 2009 the offer of Firm 'Y' quoting ₹ 8.02 crore was found L-I. The CE sent the case to DGBR on 30 July 2009 for approval in consultation with IFA/BR. The IFA concurred with the case on 7 October 2009. The case was received in DGBR on 8 October 2009, he conveyed his approval to its acceptance by the CE on 11 November 2009. As the validity of the tender was up to 20 October 2009 and the tenderer refused to extend the validity the contract could not be concluded.

In re-tendering the lowest quote of another firm quoting ₹ 9.00 crore had to be accepted. The contract that was concluded in July 2010 involved an extra expenditure of ₹ 0.98 crore.

Lately, in May 2011, DGBR, informed all the CEs to get validity of quotes for a minimum of 120 days from the date of opening and prescribed a time frame allocating the time slots for each of the activity to ensure conclusion of contracts within the validity period.

Regarding the Case-I, the DGBR stated (August 2011) that the delay was due to time taken for scrutiny and correspondence on the case, and the expectation that as per past experience, the contractors would extend the validity period. In respect of Case-II, the DGBR stated (January 2011) that they had certain doubts about the L1 rates. Both these replies are untenable as the DGBR and IFA/BR were housed in the same premises and the Government's interest could have been protected by speeding up the case by keeping the validity of the tender in mind, especially when the CE had alerted both the DGBR and the IFA of the unlikelihood getting the validity of the offer extended (Case-I).

Thus, the delay in finalising the tenders in both the cases within the validity period of the financial quotes received, resulted in an avoidable extra expenditure of ₹ 3.01 crore. The cases merit investigation to fix responsibility on all concerned officials.

The cases were referred to the Ministry of Defence in January 2012; their reply was awaited as of July 2012.

5.2 Undue benefit to a supplier

Director General Border Roads, in violation of Defence Procurement Manual 2006, the terms of the supply order and without obtaining approval of the competent financial authority, granted undue benefit of ₹ 2.28 crore to a supplier by waiving liquidated damages and payment of enhanced statutory duties during the extended delivery period.

The Defence Procurement Manual 2006 (DPM-2006) provides that only in cases where the delay in deliveries was due to reasons not within the control of the supplier or when the supplier cannot be held responsible for delay in delivery, the competent financial authority (CFA) may consider waiving off the liquidated damages (LD) with the concurrence of the Integrated Financial Adviser. The reasons to justify the waiver have to be adequately recorded. The purchaser may also grant extension of delivery dates with levy of LD as per the general conditions of contract.

We came across an instance where the Director General Border Roads (DGBR) waived and refunded liquidated damages imposed on a supplier, in violation of the relevant provisions of DPM-2006 as well as the terms of supply order. DGBR had placed two supply orders in February 2007 on 'X' company for supply of 55 and 31 Tandem Vibratory Road Rollers (TVRRs) at a total cost of ₹ 14.40 crore. The supplies were to be received in two lots i.e. the first lot of 60 by 31 March 2007 and the second lot of 26 by 31 May 2007.

The supplier could not deliver the TVRRs by the stipulated dates. DGBR extended the delivery period repeatedly with a condition to levy LD for the period of delay. The last extension was given up to 10 March 2008. DGBR recovered ₹ 1.24 crore on account of LD from the bills payable to the supplier. In July 2008, the DGBR, however, reversed the decision to levy LD and refunded the entire amount of LD on the plea of the supplier that the delay was on account of reasons beyond his control and was attributable to delay in receipt of materials from the overseas vendors. DGBR did not obtain the approval of the CFA, required under Paragraph 7.9 of DPM 2006 before deciding to relax the terms of the supply order in clear deviation of the DPM 2006. This was irregular, because even in the case of force majeure conditions, the supplier was bound to intimate such circumstances not later than 10 days of their happenings. In the instant case, the supplier had requested for the waiver of LD only in May 2008, i.e., after a lapse of 14 months, from the scheduled date of delivery and completion of the supplies in March 2008.

Further, the supply order, including the extensions given, had clearly stipulated that increase in price on account of any statutory increase or due to fresh imposition of customs duty, excise duty, sales tax or on account of any other tax or duty, in respect of stores after the date of delivery period stipulated in acceptance of tender, would not be admissible if such part of the supplies are delivered after due date of delivery. Contravening these terms, the

DGBR, on 5 March 2008, issued an amendment to the supply order, without approval of the CFA and paid to the supplier excise duty and CST/VAT at the enhanced rates amounting to ₹ 1.04 crore. The payment of increased statutory duties at enhanced rates was in violation of the supply order conditions and the provisions of DPM 2006.

HQ DGBR admitted (August 2010) that the extension of delivery period without LD had been given due to oversight. The specific considerations that prompted the DGBR to overlook the provisions contained in the procurement manual and the terms of contract need to be investigated to fix responsibility and appropriate action taken against those responsible for causing the extra burden of ₹ 2.28 crore on the exchequer.

We have referred the case to the Ministry in March 2012; their reply was awaited as of July 2012.