

## Chapter 2: Management of Works Contract in Indian Railways

### 2.1 Introduction

Indian Railways (IR) executes a wide range of works for creation of assets such as construction of new lines, doubling and gauge conversion etc. and maintenance works such as maintenance of track, renewal of track, maintenance of office buildings/quarters etc. Generally, the new works of creation of assets (new lines, doubling and gauge conversion etc.) involving huge costs/investments are executed by the Construction wing of the Zonal Railways and repair/maintenance of track related works, bridges, buildings etc. are executed by the Open Line<sup>33</sup> (Division) of the Zonal Railways through agency of contractors under the supervision of the executives of the Engineering Department of the Railways. During 2011-14, IR spent ₹ 39,028 crore towards payments to contractors executing these works across all the Zonal Railways. Of this, ₹ 17,046 crore was spent by Open Line wing of Engineering Department on maintenance works (₹ 3,909 crore) and track renewals works (₹ 13,137 crore); while ₹ 21,982 crore was spent by Construction wing of Engineering Department on construction projects of new lines, doubling, gauge conversion and other new construction works. Thus, 43.68 per cent of total expenditure was incurred on repair and maintenance of assets and 56.32 per cent on creation of new assets during 2011-12 to 2013-14. The average expenditure on payment to contractors was around ₹ 13,000 crore per annum (*Annexure-I*). Ensuring competitive rates, engagement of qualified and capable contractors to execute the works including time bound completion of work are the essence of efficient and effective contract management. Efficient and effective contract management is also vital to keep the Railways in a continuous running condition and also to widen its activities.

Audit reviewed the tenders and contracts (completed and under progress) across the Zonal Railways to assess whether:

- (i) *due procedure/rules were followed in invitation and processing of tenders and award of contracts;*
- (ii) *the works were properly executed and completed in time ;*
- (iii) *dues from contractors were recovered as per conditions of contract, and*
- (iv) *the arbitration cases were effectively dealt with.*

<sup>33</sup>Open Line i.e. Divisions of the Zonal Railways responsible for maintenance of fixed assets viz tracks, bridges, building etc.

The position of tenders and contracts awarded by the Open Line and Construction wing of the Engineering Department and test checked in audit is shown in the Table below:

<b>Table 2.1</b>			
<b>Sl.No.</b>	<b>Particulars</b>	<b>Total</b>	<b>Test checked in audit</b>
<b>1.</b>	Tenders finalised	8,664	1,215
<b>2.</b>	Contracts completed	5,646	927
<b>3.</b>	Contracts in progress	1,004	313

The basis of selection of tenders and contracts for test check in audit is indicated in **Appendix I and Appendix II.**

The Audit, covering all the 16 Zonal Railways<sup>34</sup> was carried out during August 2014 to December 2014 and the audit findings were discussed in Exit Conferences held with the Zonal Railways Administration. A Consolidated Report was issued to Railway Board (RB) in February 2015 and findings were also discussed in the Exit Conference held with RB on 16<sup>th</sup> April 2015. The reply of RB furnished in June 2015 has been taken into account and incorporated in relevant paragraphs given below.

## **2.2 Audit Findings**

### **2.2.1 Tender process**

#### **2.2.1.1 E-tendering**

E-tendering is an internet based process wherein the complete tendering process beginning with advertising, placing of tender documents online, submission of bids and required documents by the tenderers, evaluation of bids and finally ranking of bidders based on offer value are done online.

A review of implementation of E-tendering system in respect of works tenders in IR revealed that presently only tender documents are being placed on website in IR and the contractors who intend to bid for the tender download the physical copy of tender documents. After that, no online procedure is followed in IR. While complete E-tendering was implemented in case of stores tenders in IR through a dedicated site of Indian Railway Electronic Procurement System (IREPS), the same is yet to be implemented in case of works tenders on

<sup>34</sup>Excluding Metro Railway/Kolkata

IR despite issue of instructions for computerisation of the tendering process by Vigilance and RB in November 2003 and in June 2004 respectively.<sup>35</sup>

When the matter was taken up (February 2015), Railway Board in their reply (June 2015) stated that sanction for e-tendering in works contracts had been issued in May 2015 and is expected to be completed during the year. The reply of the RB indicated that implementation of complete e-tendering has not been taken up despite instructions for complete e-tendering issued as far back as in November 2003.

As complete implementation of E-tendering would eliminate malpractices related to bid evaluation and ensure transparency in the bidding process, Railways should take immediate steps for implementation of complete e-tendering in respect of works contracts.

#### 2.2.1.2 Level of participation in tenders

The purpose of open tendering is to ensure that Railways are able to get the best agencies at competitive price. Details of the level of participation in 1,215 tenders reviewed in the 16 Zonal Railways are given in *Annexure II*. Further analysis of level of participation by the bidders in the works tenders is shown in the Table below:

Table 2.2.1.2		
No. of Bids	No. of Tenders	Percentage of the total Tenders
<b>Single bid</b>	306	25
<b>Two bids</b>	325	27
<b>Three bids</b>	217	18
<b>Four bids</b>	131	11
<b>Five and above bids</b>	236	19
<b>Total</b>	1,215	100

From the above Table, it was observed that in 52 per cent of the works tenders, only two or less than two bidders quoted their rates. A competitive rate is possible when there is participation in Tender by multiple contractors. Where

<sup>35</sup> *Railway Board's Letter No.2002/CE-I/CT/38/Policy New Delhi, dated 16-11-2003 and 2004/CEI/Misc./MR's Instructions New Delhi, dated 21-6-2004.*

the number of participants is one or two, the rates quoted cannot be regarded as competitive.

Railway Board in their reply stated that the less number of tenderers was due to non-availability of fund, existing work load on the contractors, difficult terrain and working condition.

The inordinate delays in execution of contracts in large number of cases on account of causes attributable to Railways could be a reason for such low participation in Tenders. Railways need to identify and eliminate reasons for low participation to ensure competitiveness in bidding process.

### 2.2.1.3 Discharged tenders

With a view to avoiding wastage of time and resources, RB issued instructions<sup>36</sup> that due care should be taken while processing tenders ensuring that estimates and schedules are correctly prepared, adequate time is given to tenderers to submit their bids and tenders are properly advertised to ensure adequate participation.

In IR, 1,161 tenders were discharged<sup>37</sup> during the period 2011-14. Out of the above, 647 discharged tenders valuing above ₹ 1 crore were test checked in audit. Zonal Railway-wise details of discharged works tenders are given in *Annexure-III*. Analysis of discharged works tenders revealed the following:

- Tenders were discharged for reasons such as high rates (243), ineligible tender/offer received (171), non-availability of site/design/approvals (126), backing out of lowest bidder (49), low participation (33), reasons not available on record (16) and work not required (9).
- The incidence of discharge of tender was high in NR (170), SECR (134), WCR (126), SWR (119) and ECOR (102).
- Out of 647 tenders discharged during April 2011 to March 2014, retendering was done in 343 tenders (53 per cent). The average time taken for retendering was eight months. The delay in retendering indicated that there was no immediate need or justification for the work planned for.
- The average delay of 359 days was observed in respect of 295 tenders (46 per cent), which were not retendered till March 2014.
- Railway Board in their reply stated that due to receipt of ineligible tenders, high rates or suspected cartel formation or withdrawal of eligible L1

<sup>36</sup>Railway Board Letter No.2000/W-I/NE/NL/10 Dated 17/10/2001

<sup>37</sup>The invitation of offer i.e. a tender can be withdrawn any time before acceptance of offer by the Railway which invited the offer due to reasons such as work no longer required, defect in tender schedule, non-receipt of required approvals/sanctions, high rates or unworkable rates or technical ineligibility of the offer(s) received, low participation, which is termed as "discharge of tender". As per the guidelines issued by the Central Vigilance Commission (CVC), tenders are also discharged on backing out of lowest tenderer.

(tenderer quoting lowest rate), discharge of tender was inevitable to ensure transparency. Audit observed that though Railways incurred an extra expenditure of ₹ 50.29 crore in 52 cases in 12 Zonal Railways and saved ₹ 122.48 crore in 68 cases in 15 Zonal Railways on retendering, discharging of the works tenders due to non-availability of site/design/approvals (126) and work not required (9) which could have been avoided were not addressed in their reply. The delay in taking up the works afresh was also not addressed.

Considering the loss of time for finalising a fresh tender, RB may take action to minimise the cases of discharged tenders ensuring that tenders are called for only after all preliminary works are completed.

#### 2.2.1.4 Award of contracts pending preliminary preparation

To ensure successful and timely execution of contracts, Railway Board issued instructions<sup>38</sup> that tenders are to be called for only after detailed site investigations, ensuring availability of clear site and adequacy of funds for execution of contracts in time. Review of selected 1,215 tenders invited during 2011-14 revealed the following:

- 477 tenders<sup>39</sup> were awarded during the period without ensuring completion of prescribed preliminary works such as preparation of drawings, availability of site and ensuring availability of funds.
- The information regarding completion of preliminary works before calling of tenders was not placed on record by the executing authority before the Tender Committee (TC) despite provisions in this regard in Para 1253 of Indian Railway Code for Engineering Department and Para 612 of Finance Code. Repeated instructions were also issued by the RB regarding calling of tenders only after ensuring completion of preliminary works.
- There were delays ranging from 5 days to 1405 days in execution of 313<sup>40</sup> contracts out of these 477 contracts. The average delay was 342<sup>41</sup> days per contract.

<sup>38</sup>Railway Board's letter No. 72/WI/CT/43 dated 21-9-1972, 30/W2/3/33 dated 29-8-1980, 85/W1/CT/9 dated 22-2-1985

<sup>39</sup>CR-25, ECR-6, WCR-68, SCR-13, ER-78, NR-16, NFR-17, NWR-32, NER-14, SR-10, SER-78, SWR-16, WR-8, NCR-24, ECoR-18, SECR-54

<sup>40</sup>CR-18, ECR-6, WCR-41, SCR-8, ER-49, NR-16, NFR-16, NWR-20, NER-11, SR-10, SER-54, SWR-15, WR-7, NCR-23, ECoR-6, SECR-13

<sup>41</sup>CR-360, ECR0, WCR-287, SCR-433, ER-321, NR-323, NFR-347, NWR-301, NER-364, SR-418, SER-361, SWR-311, WR-246, NCR-384, ECoR-305, SECR-374 (IR average: 342)

- In 675 out of 927 contracts in progress, extensions were given due to award of those tenders without ensuring completion of preliminary works, as detailed in *Annexure VIII*.

In reply, RB stated that Zonal Railways were being advised to ensure that the tenders were floated only after detailed site investigation, ensuring availability of clear site etc. However, Audit observed that similar orders were issued as far back as in year 1972 and reiterated in the years 1980, 1983, 1985, 1990, 1993, 2000 and 2001 but were being ignored in a routine manner. RB may, therefore, prescribe a suitable regulatory mechanism at Zonal Railways to ensure that compliance of the instructions to invite tenders after completion of preliminary works is monitored by the TC or the accepting authority before Letter of Acceptance (LOA) is issued by the Railways.

#### 2.2.1.5 Time taken to finalise the tender

As per instructions of RB<sup>42</sup>, tenders are to be finalised within the period of validity, which includes consideration of tender by nominated TC, acceptance of the TC recommendations and issue of LOA within the period of validity mentioned in the tender, to ensure economy in expenditure and best utilisation of Railway Funds<sup>43</sup> as laid down in Paragraphs 1202 and 1210 of Indian Railway Engineering Code.

A review of the time taken in 1,211 tenders<sup>44</sup> finalized out of 1,215 tenders selected for test check during the period of review revealed the following:

Table 2.2.1.5		
Sl. No	Particulars	Details
1	Number of Tenders test checked	1211
2	Minimum time taken to finalise the tender	2 days
3	Maximum time taken to finalise the tender	555 days
4	Number of tenders delayed in finalization	717
5	Letter of Acceptance issued without delay	155

<sup>42</sup> Railway Board letter No. 60/777/RS dated 13-2-1960, No. 94/CE-I/CT/4 dated 17-9-1997

<sup>43</sup>No. 90/CEI/CT/1 dated 3-6-1992.

<sup>44</sup> Difference due to four discharged cases in ECoR.

6	LOA issued with delay of 1 to 15 days	881
7	LOA issued with delay beyond to 15 days	175

- i) There were delays in finalization of tender in 717 tenders<sup>45</sup> (59 per cent) out of 1,211 tenders. Tenders were finalised in the extended validity period beyond 90 days in 707 tenders and beyond 120/180 days in 10 tenders<sup>46</sup>. As against time of 90/120 days normally provided in most tenders for finalization of offer and issue of LOA, analysis of the time taken by Railways to finalize the tenders revealed that time taken to finalize the tenders ranged from a minimum of two days on SECR to a maximum of 555 days on ER.
- ii) Delay in finalization of tenders was also contributed by delay in issue of LOA after finalization of tender. LOA are required to be issued within period of validity of offer. Audit observed that while LOA were issued on the same day in 155<sup>47</sup> cases, there was delay ranging from 1 to 15 days in 881<sup>48</sup> cases and 16 days to 195 days in 175<sup>49</sup> cases. Timely issue of LOA assumes significance as this would ensure early commencement of work by the contractor within 15 days of issue of LOA, as per prevailing practice and as indicated in the LOA that the contractors are required to start the work within 15 days of issue of LOA.

Audit also observed that no reasons were recorded on files for delay in finalization of tenders or delay in issuing LOA. The same was not analysed or action taken to ensure timely completion of tender process.

There are no specific timelines prescribed for the various activities involved in processing of tenders including that of preparation of tender schedules, briefing notes by Zonal Railways (except NR which has prescribed a time schedule). There is only one general direction<sup>50</sup> that the tenders are to be evaluated and to be finalized at the earliest and before the expiry of validity of offers, which is normally 90 days. RB, therefore, needs to examine this issue and prescribe timelines for various phases based on initiative taken by NR.

<sup>45</sup> CR-67, ECR-71, WCR-58, SCR-54, ER-11, NR-24, NFR-10, NWR-55, NER-26, SR-73, SER-33, SWR-66, WR-15, NCR-30, ECoR-60, SECR-64

<sup>46</sup> SCR-1, ER-4, NFR-1, NWR-2, NER-1, WR-1.

<sup>47</sup> CR-11, ECR-19, WCR-9, SCR-1, ER-2, NR-10, NFR-6, NWR-25, NER-11, SR-4, SER-7, SWR-1, WR-13, NCR-21, ECoR-3, SECR-12.

<sup>48</sup> CR-46, ECR-56, WCR-52, SCR-37, ER-51, NR-57, NFR-52, NWR-50, NER-52, SR-57, SER-64, SWR-68, WR-63, NCR-56, ECoR-57, SECR-63.

<sup>49</sup> CR-19, ECR-3, WCR-7, SCR-40, ER-25, NR-5, NFR-20, NWR-0, NER-3, SR-17, SER-7, SWR-9, WR-2, NCR-1, ECoR-14, SECR-3

<sup>50</sup> Railway Board Letter No. 94/CE-I/CT/4 dated 17-9-1997

RB in their reply stated that delay in finalisation of tenders takes place due to reasons such as verification of credential of tenderers or for negotiations etc. RB vide their letter dated 19.06.2015 instructed Zonal Railway and Railway Production Units to finalise tenders within validity period of bids and avoid delay in issuance of LOA as far as possible. RB may ensure compliance of its instructions.

#### 2.2.1.6 Delay after the issue of letter of acceptance

The General Conditions of Contract (GCC) (Clause 8-Part-I) require that the Contract Agreement should be executed by the contractor within seven days of receipt of LOA. As per clause 16 (4) of GCC, the successful bidder is required to submit a Performance Guarantee (PG) within 30 days from the date of issue of LOA and on payment of penal interest beyond 30 days up to 60 days. In case the contractor fails to submit PG even after 60 days, the contract shall be terminated duly forfeiting Earnest Money Deposit (EMD) and other dues. A Contract Agreement should be signed only after deposit of PG by the tenderer. Thus a contradiction exists in policy instructions.

A review of submission of PG in the 1,215 tenders revealed that there was delay beyond 30 days in submission of PG in 474 contracts<sup>51</sup> (40 per cent). Delay beyond 60 days was observed in 94 contracts<sup>52</sup> out of which delay beyond 180 days was observed in 25 contracts<sup>53</sup>. Penal action as envisaged in Clause 16(4) of GCC to treat these contracts as terminated forfeiting EMD and recovery of other dues was not taken in 165 cases<sup>54</sup>.

On the other hand, out of 1,215 tenders selected for test check, contract agreements were signed in 1,196 tenders<sup>55</sup> (contracts were yet to be executed in 19 tenders finalized during the period from 2-5-2011 to 21-1-2014). Analysis of the remaining 1,196 cases revealed the following:

- The average time taken in these 1,196 tenders for entering into contract after issue of letter of acceptance was 110 days and the average time taken ranged from 83 days (CR and WCR) to 174 days (SER) as indicated below.

<sup>51</sup> CR-25, ECR-27, WCR-18, SCR-46, ER-31, NR-10, NFR-28, NWR-29, NER-27, SR-28, SER-38, SWR-38, WR-25, NCR-32, ECoR-30, SECR-42

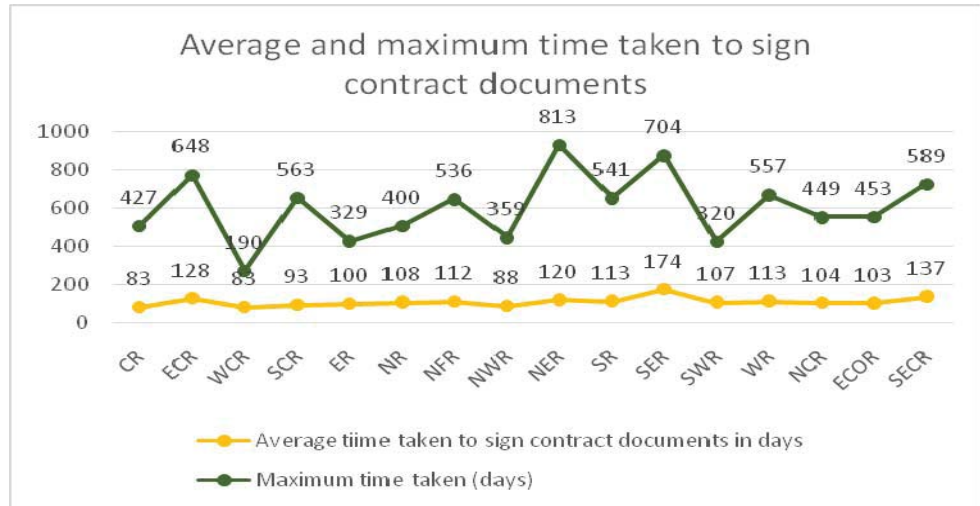
<sup>52</sup> CR-5, ECR-9, WCR-2, SCR-13, ER-1, NR-0, NFR-10, NWR-4, NER-4, SR-4, SER-10, SWR-10, WR-4, NCR-3, ECoR-5, SECR-10

<sup>53</sup> CR-2, ECR-3, SCR-4, NFR-2, NWR-2, NER-3, SER-1, SWR-3, NCR-1, SECR-3, WR-1

<sup>54</sup> CR-2 - ₹ 1.35 lakh, ECR-20 - ₹ 13.89 lakh, WCR-3 ₹ 0.34 lakh, SCR-10 ₹ 6.78 lakh, ER-0, NR-10 ₹ 2.28 lakh, NFR-14 ₹ 11.07 lakh, NWR-7 - ₹ 2.73 lakh, NER-12 - ₹ 20.56 lakh, SR-6 - ₹ 0.49 lakh, SER-21 - ₹ 1.10 lakh, SWR-20 - ₹ 5.47 lakh, WR-14 - ₹ 2.54 lakh, NCR-21 - ₹ 2.75 lakh, ECoR-2-, SECR-3 - ₹ 0.24 lakh

<sup>55</sup> CR-76, ECR-78, WCR-66, SCR-78, ER-74, NR-72, NFR-78, NWR-74, NER-66, SR-78, SER-78, SWR-78, WR-77, NCR-75, ECoR-73, SECR-75





- Contracts were executed within the prescribed period of seven days in only 10 cases.<sup>56</sup>
- The time taken to sign the contract was between eight and 180 days in 1029 cases.<sup>57</sup>
- Abnormal delay of more than six months was noticed in 128 contracts<sup>58</sup> and more than one year in 29 contracts<sup>59</sup>. No action was taken by Railway Administration to treat these 157 contracts as terminated and forfeit the earnest money.
- In 22<sup>60</sup> out of 1,196 cases, the contractor failed to commence the works based on LOA.

Railway Board in their reply stated that most successful tenderers start work soon after issue of LOA and even before depositing of PG and delay in submission of PG or delay in signing of contract did not necessarily mean delay in commencement of work.

The reply of Railway Board was not tenable as it was contrary to the provisions of Paragraphs 1256 and 1259 of Indian Railway Code for Engineering Department which provide that no contractor should be permitted to commence work until the relevant contract has been signed by the parties competent to do so. As LOA does not include special conditions and other stipulations which form part of legal binding contract, there is an inherent problem in interpretation and Railways would not be able to enforce the conditions of contract in case of failure of contract or litigation. RB, thus, needs to frame a

<sup>56</sup> CR-6, ECR-1, ER-1, NWR-1, NCR-1

<sup>57</sup> CR-65, ECR-65, WCR-64, SCR-72, ER-69, NR-63, NFR-65, NWR-68, NER-60, SR-71, SER-48, SWR-56, WR-70, NCR-68, ECoR-67, SECR-58

<sup>58</sup> CR-3, ECR-8, WCR-2, SCR-5, ER-4, NFR-12, NR-9, NWR-5, NER-3, SR-6, SER-25, SWR-18, WR-5, NCR-5, ECOR-5, SECR-13

<sup>59</sup> CR-2, ECR-4, SCR-1, NFR-1, NER-3, SR-1, SER-5, SWR-4, WR-2, NCR-1, ECOR-1, SECR-4

<sup>60</sup> CR-8, ECOR-5, NR-3, SECR-5, SCR-1

clear policy in respect of timely signing of contract documents to avoid delays and litigation.

## 2.3 Execution of contracts

### 2.3.1 Variation in quantities/operation of new items during execution

In terms of Para 1268 of Indian Railway Code for Engineering Department, a variation of 15 to 25 *per cent* was considered as reasonable depending on the nature of the work involved. As per RB instructions<sup>61</sup> assessment of quantities in the tender stage is to be done with due care so as to avoid scope for large modifications or addition to the existing work schedules.

The details of variations in contracts during course of execution are captured in *Annexure IV*. Analysis of the variations revealed that out of 1,215 contracts test checked in audit, awarded at a value of ₹1,729.50 crore, variations in quantities exceeding 25 *per cent* ranging from 26 *per cent* to 455 *per cent* were observed in 8,965 items such as earthwork, cement concrete, supply of cement and steel and laying and linking. Excess items were operated in 390 contracts<sup>62</sup> involving a monetary value of ₹361.37 crore. New items were also operated in these contracts at a value of ₹44.38 crore.

The above analysis indicated that there was a failure in estimation and assessing the scope of work correctly. Besides, operation of excess quantities and new items resulted in increase in value of the works requiring revised PG to be collected from the contractors. Audit observed that revised PG was not collected on increased value of work in 13 Zonal Railways<sup>63</sup>.

RB in their reply stated that variations sometimes become necessary due to site conditions, hidden items and change in scope of work. RB's reply is contrary to its own instructions that the detailed investigations are to be carried out and estimates framed are realistic and variations to be restricted to less than 25 *per cent* of tender quantity.

Railways need to ensure compliance of extant instructions of assessing of the quantities as exactly as possible during preparation of tenders so as to avoid large scale changes during course of execution leading to delays in execution and litigations.

<sup>61</sup> Railway Board Letter No. 72/WI/CT/43 dated 21-9-1972, No. 90-BC-NF/7 dated 13-11-1990, Letter No. 94/CE.1/CT/56 dated 16/8/1994, No.93/WZ/PQR/SC/4/P dated 27/9/96 and No.90/WI/DL/S/1 dated 13/4/2000

<sup>62</sup> CR-37, ECR-7, WCR-2, SCR-45, ER-31, NR-23, NFR-31, NWR-39, NER-10, SR-48, SER-26, SWR-21, WR-25, NCR-11, ECoR-21, SECR-13

<sup>63</sup> CR- ₹ 0.23 crore, ECR- ₹ 0.45 crore, WCR – ₹ 3.18 lakh, SCR- ₹ 0.81 crore, NR – ₹ 9.17 lakh, NFR- ₹ 2.16 crore, NWR – ₹ 1.15 lakh, SR – ₹ 0.65 crore, SER – ₹ 0.11 crore, SWR – ₹ 0.35 lakh, WR – ₹ 1.10 crore, NCR – ₹ 0.11 crore, SECR – ₹ 5.37 lakh.

**2.3.2 Premature termination of contracts on administrative account**

Railway Board issued instructions<sup>64</sup> detailing the need for adopting better contract management practices and to avoid situations like delay in furnishing detailed drawings to the contractor to avoid consequent delays in the execution of the work or abandonment or termination of contracts necessitating calling of fresh tenders for completing the work at higher cost.

During the period of review (2011-12 to 2013-14), 259 contracts were fore-closed<sup>65</sup> in IR. Out of this, 173 fore-closed contracts valuing above ₹1 crore were test checked in audit, the data pertaining to which is captured in *Annexure V*. Analysis of these cases revealed the following:

Sl. No.	Type of contracts	No. of contracts	Reasons of foreclosing of contracts		
			Paucity of funds	Clear Site not available	Others such as slow progress, work not required etc.
1	Maintenance	16	8	5	3
2	Other Miscellaneous works	41	28	8	5
3	Projects <sup>66</sup>	76	35	27	14
4	Safety	20	5	10	5
5	Track Renewals	4	0	1	3
6	Traffic Facility	16	7	3	6
	Total	173	83	54	36

Out of 173 fore-closed contracts test checked, 133 contracts were yet to be re-tendered, the time taken for retendering up to 31 March 2014 ranged from one day to 1,007 days. The Zonal Railway Administration incurred an expenditure of ₹228.24 crore on these contracts which was rendered unfruitful till 31 March 2014. In 40 contracts which were awarded afresh, the Zonal Railway Administration incurred an additional expenditure of ₹49.50 crore in 11 Zonal Railways<sup>67</sup> due to higher rates received in retendering.

Foreclosure in 80 per cent of the cases (137 cases) due to reasons such as paucity of funds (83 cases) and non-availability of clear site (54 cases) was indicative of defective planning and taking up works without ensuring completion of preparatory works. In 36 cases, contracts were foreclosed on

<sup>64</sup> Railway Board letter No. 85/W1/CT/9 dated 22/2/1985

<sup>65</sup> Whenever, a contract has to be closed midway due to Railway Administration's fault viz. non-handing over of clear site to the contractor, non-handing over of drawings, non-completion of preliminary works like jungle clearance/survey, paucity of funds etc, the contract is foreclosed/short-closed under clause 61 and 62 GCC.

<sup>66</sup> Doubling -10, Gauge Conversion-23, New Line - 38, Shed- 5

<sup>67</sup> CR- ₹ 3.21 crore, ECR - ₹ 7.29 crore, SCR- ₹ 10.55 crore, NR- ₹ 0.58 crore, NFR - ₹ 3.99 crore, NWR - ₹ 1.77 crore, SR - ₹ 11.11 crore, SWR - ₹ 1.24 crore. NCR ₹ 1.03, ECOR - ₹ 7.78 crore, SECR - ₹ 0.95 crore.

account of reasons such as variations, court orders, change in scope of work, work not required and slow progress on railways account.

Railway Board in their reply accepted the observations and stated that instructions were being re-iterated.

### 2.3.3 Termination of contract on contractors account

The conditions of contract governing management of the contracts define the roles, obligation and rights of both the parties-the Railways and the contractor. These conditions comprise of General Conditions of Contracts which are the basic conditions of the contract framework applicable to all contracts and Special Conditions of Contract which are framed to cover the specific nature of the work being tendered.

As per clause 62 of GCC when the contractor fails to execute the work to the satisfaction of Railway Administration, the contract will be terminated by issuing notices as stipulated.

During the period under review (2011-12 to 2013-14), 473 contracts were terminated in the Zonal Railways. Zonal Railway wise details of terminated cases are given in *Annexure VI*. Out of this, 265 contracts terminated in the Zonal Railways that were reviewed in audit revealed the following irregularities:

- In 163 cases, contracts initially awarded during the period from July 2006 to February 2014 at a value of ₹ 639.68 crore were terminated after incurring an expenditure of ₹99.85crore. However, these were yet to be re-tendered (March 2014). The expenditure of ₹ 99.85 crore incurred on these works was rendered unfruitful.
- In respect of 102 terminated contracts<sup>68</sup> which were re-tendered, the average time taken for retendering was 203 days and an extra expenditure of ₹ 83.44 crore was incurred due to higher rates accepted in retendering resulting in increasing the cost of works.

Railway Board in their reply accepted the observations and stated that Zonal Railways were being directed to ensure that the contracts terminated on contractors' account are taken up early to avoid idling of funds.

<sup>68</sup> CR-5, ECR-4, WCR-2, SCR-1, ER-22, NR-5, NFR-1, NWR-13, SR-8, SER-10, SWR-1, WR-9, NCR-2, ECoR-6, SECR-13

### 2.3.4 Price variation clause during extended period of contract

Time is the essence of contract as per GCC, and thus timely completion of works is essential to ensure that the investments made on the works achieve desired results.

In Indian Railways, Price Variation clause (PVC)<sup>69</sup> and Statutory Variation Clause (*to cover increase in rates of Govt. taxes and royalties*) are made part of contract conditions in respect of all tenders valuing over ₹50 lakh irrespective of time of completion<sup>70</sup> to safeguard against general inflation linked to specified price indices for labour, stores and fuel.

In case of extensions in execution of contract beyond original “due date of completion” due to (i) modification or change in scope of work, (ii) delay not due to Railway/ Contractor but due to neglect on part of employees of Railway or other contractors employed by railway or (iii) delay on account of Railways under Clause 17 (A) of GCC<sup>71</sup>, Railways are liable for payment of price variation. No price variation is liable to be paid on account of delay in execution on account of contractor under clause 17(B) of GCC. Granting extensions with price variation, in cases where delay in execution is due to contractors’ fault results in extending undue benefit to the contractor.

Data pertaining to payment of price variation was captured in **Annexure VII, VIII and IX**, an analysis of which revealed the following:

- Out of 1,215 tenders selected for test check, contracts were executed in 1,196 cases. In 861 contracts as detailed in **Annexure X**, there were delays in execution and price variation amounting to ₹67.78 crore was paid to the contractors in the extended period of contract. Out of this, an amount of ₹4.04 crore<sup>72</sup> was paid in 13 contracts even though the delay was attributable to contractors alone.

<sup>69</sup> While General Financial Rules (GFR) Clause/Rule 204 (vii) states that cost plus contracts should be avoided unless un-avoidable and justified, Clause/Rule 204 (viii) provides that price variation should be provided in long term contracts exceeding delivery period of 18 months.

<sup>70</sup> Clause 46(A) of GCC and Railway Board letter No. 2008/CE.1/CT/Con/7 (PCE/GM) dated 15-12-2008

7117–A Subject to any requirement in the contract as to completion of any portions or portions of the works before completion of the whole, the contractor shall fully and finally complete the whole of the works comprised in the contract (with such modifications as may be directed under conditions of this contract) by the date entered in the contract or extended date in terms of the following clauses:

(i) If any modifications have been ordered which in the opinion of the Engineer have materially increased the magnitude of the work, then such extension of the contracted date of completion may be granted.

(ii) If in the opinion of the Engineer, the progress of work has any time been delayed by any act or neglect of Railway's employees or by other contractor employed by the Railway.

(iii) Failure or delay by the Railway to hand over the Contractor clear site or to give the necessary notice to commence the works or to provide the necessary drawings or instructions or any other delay caused by the Railway due to any other cause whatsoever.

<sup>72</sup>CR- ₹ 3.38 crore (one agreement), SCR – ₹ 3.92 lakh (four agreements), NR – ₹ 1.78 lakh (one agreement), NWR – ₹ 2.73 lakh, SER – ₹ 13.56 lakh (three agreements), ECOR – ₹ 44.76 lakh (three agreements)

- In addition to above, out of 927 contracts in progress as on 31-3-2014, an amount of ₹321.39 crore was paid towards price variation in 760 contracts. Similarly out of 313 completed contracts in 2014-15, in 295 cases, payment of an amount of ₹66.38 crore was made towards price variation. Extensions to contracts in these cases were also granted under clause 17 (A) of GCC. i.e. delay on account of Railways. The delays of these contracts are dealt with in detail in subsequent Para No. 2.3.5.

Thus, an amount of ₹ 455.55 crore was paid to contractors towards price variation during extended period of contract due to delay in execution as detailed above. RB failed to address the issue in their reply. As payment towards price variation indicated deficiency in contract management attributable to Railways leading to delays in execution, RB needs to enforce compliance of existing instructions to ensure timely completion of contracts and avoiding cost overrun.

### 2.3.5 Delays in execution of works contracts

Taking into account the importance of timely completion of contracts, to analyse the causes and their impacts, Out of 6650, Audit examined the extensions granted in 1240 works contracts which included 927 contracts which were in progress till March 2014 and 313 contracts completed during 2013-14 as detailed in *Annexure VIII and IX*. The details in respect of 1240 contracts are summarised in the Table below:

**Table No.2.3.5 : Status of execution of contracts**

Details	Contracts in progress as on 31-3-2014	Contracts completed during 2013-14	Total (Col 2 and 3)
1	2	3	4
No. of Contracts Test Checked	927	313	1240
No. of contracts delayed beyond original date of completion.	760	295 <sup>73</sup>	1055
Percentage with reference to sample checked	82 per cent	94 per cent <sup>74</sup>	85 per cent
Age wise delays in execution of above contracts.			
Up to One year	336	109	445
One to Two years	186	93	279
Beyond Two years	218	87	305
Beyond Five Years	20	3	23

<sup>73</sup> Includes three contracts in CR which were terminated.

<sup>74</sup> Six per cent of the contracts were completed within the original date of completion

Total expenditure incurred on contracts delayed (indicated above)	₹3,320.18 crore	₹1,383.39 crore <sup>75</sup>	₹4703.57 Crore
Main causes of delay in contracts <sup>76</sup>			
(i) Site not made available	286	70	356
(ii) Plans/drawings not made available	145	30	175
(iii) Slow progress by contractor	85	35	120
(iv) Other reasons (includes paucity of funds, causes beyond control of contractor/railways such as floods, law and order problems/strike etc.)	244	160	404
No of contracts out of above, where extension is attributed to Railways alone	675 (88 per cent )	196 (67 per cent)	871 (83 per cent)
Number of delayed contracts related to Safety including Track renewal and Track maintenance works	162 (21 per cent)	86 (29 per cent)	248 (23 per cent)
Number of delayed contracts related to new lines, doubling, gauge conversion and traffic facilities	451 (59 per cent )	134 (45 per cent )	585 (55 per cent )

From the table above, it was observed that:

- Delays in completion were noticed in 1,055 (85 per cent) out of 1240 contracts, indicating that delays were more a routine than exception. Only 18 out of 1240 contracts due for completion before 31-3-2014 were completed within original date of completion.
- The extent of delays ranged from one month to one year in 445 contracts, one to two years in 279 contracts, two to five years in 305 contracts and beyond five years in 23 contracts. Thus, 49 per cent of contracts were delayed beyond one year.
- While delays in only 120 contracts (11 per cent) were due to slow progress by contractor, 871 contracts (83 per cent) were delayed on account of railways for reasons such as award of tenders without

<sup>75</sup>Contract Value

<sup>76</sup> Contracts are extended multiple times on multiple reasons. The classification of cause of delay is based on primary reasons on which extensions were granted in contracts test checked in audit. Multiple extensions in same contract are not indicated.

ensuring availability of site and preparation of designs and drawings and paucity of funds.

- Apart from the cost overrun of ₹387.77 crore by way of PVC payments as detailed in preceding Para 2.3.4 full benefits of expenditure of ₹4703.57 crore incurred on unfinished works or works completed belatedly remained unfruitful for periods ranging from one month (as on 31-3-2014) to 90 months. The delays also resulted in depreciating value of assets created in form of bridges, building, tracks, materials lying at site etc.
- 23 per cent of delayed contracts (248 contracts out of 1,055 contracts) pertained to safety related works such as level crossings, Road Over Bridges, Bridges intended for replacement purposes, Track renewal etc. The delays in completing these works adversely affected the safety in train operations.
- 55 per cent of delayed contracts (585 contracts out of 1,055 contracts) pertained to projects like new lines/doublings/gauge conversion. The delay in completing these contracts in turn has cascading effect on the project as a whole or parts of projects (where projects are opened for traffic section wise) and adversely affects the expected benefits envisaged from projects/works. Expected improvements in line capacity/increase in capacity of sheds for repairs and maintenance could also not be achieved as anticipated. Delays in contracts pertaining to projects like new lines, gauge conversion and doubling also result in adverse impact on timely delivery of augmentation of capacity works of Railway.

Shortcomings in contract management leading to delays in implementation of projects were commented upon in Audit Para No.3.1 of Report No.34 of 2010-11. The Railway Administration in their Action Taken Note while accepting the delays stated (March 2013) that the delays in execution were unavoidable due to reasons such as non-availability of assured funds. RB stated that system improvement is a continuous ongoing process and Railways have taken necessary corrective actions on deficiencies and lapses. RB also stated that cases of failures of contracts have been analysed and conditions which were causing impediments in project execution have been removed/simplified.

The analysis of Audit in the present study, however, indicated that there was scope for improvement in the execution/completion of contracts in IR despite necessary corrective actions taken by RB. Instructions issued to call for tenders only after ensuring completion of preparatory works reiterated from time to time were not being followed even now. There is a need to monitor each activity with proper co-ordination and extensions should not be allowed in a routine manner.



Railway Board in their reply stated (June 2015) that extensions in date of completion become necessary due to reasons such as civil disturbances, law and order problems, sabotage, other contractors or government departments works, material availability, change in scope of work, accidents or mixed nature like default of railway and contractor. The fact remained that as per test check of execution status of 1240 contracts, it was seen that most of the delays were attributable to failure of Railways' planning, preparatory works before award of tenders. The trend of extensions and resultant delay in execution of contracts indicated that extensions to contracts have become a norm rather than exception of contract management in IR which is required to be improved upon.

### 2.3.6 Recovery of dues from the contractor

Various recoveries<sup>77</sup> are to be made from the contractor's bills. The recoveries are to be incorporated in the bills prepared by the executive in charge of the work in the field i.e. the Deputy Chief Engineers in Construction and Senior Divisional Engineers in Open Line. The recoveries proposed are then checked for correctness in the Accounts Office with relevant field documents before the bill is passed for payment.

The correctness of these recoveries in respect of 1,215 contracts where bills were passed for payments were test checked in audit. Zonal Railway-wise details are shown in table below. Analysis in audit revealed that an amount of ₹6.12 crore was short-recovered towards Income Tax, Sales Tax/VAT, Seigniorage Charges and Building and Construction Workers Cess in 179<sup>78</sup> contracts in 10 Zonal Railways.

Table 2.3.6

Category	Amount of short recovery (₹ in lakh)	Zone wise details
1	2	3
Income Tax	5.16	SCR - 1.53, NR- 0.25, NFR - 1.41, NWR 0.61 and ECOR-1.36
Sales Tax/VAT	142.92	NR - 44.42, NFR 4.36, SER 93.9
Seigniorage charges	170.72	SCR 6.67, SER- 164.05

<sup>77</sup>As per conditions of contract, several recoveries as a part of complying with the statutory obligations imposed on the contracts by various statutes of central and state/local laws. Besides these, the administration is also entitled to recover hire charges towards hire of tools and machineries, supply of water and electricity and failure of contractor to employ qualified supervisors. The statutory deductions to be made at source are Income tax in compliance with section of 194-C of IT Act, Sales Tax/Value Added Tax (VAT) in compliances with local Sales Tax/VAT laws, Building and construction workers cess (BOCW) in terms of BOCW Act 1996, seigniorage/royalty charges on minor minerals consumed in the work in compliance with Minor Minerals Act of the State.

<sup>78</sup> CR-1, SCR-5, NR-17, NFR-40, NWR-6, SER-59, SWR-1, WR-36, ECOR-2, SECR-12

Building and Construction Workers Cess	293.85	CR-0.71, SCR-2.27, NR-9.55, NFR-93.91, NWR-3.02, SER-85.42, SWR-5.05, WR-90.94, SECR-2.98
Total	612.65	

The short recovery of the above dues indicated the need for strengthening the machinery of internal check in this regard.

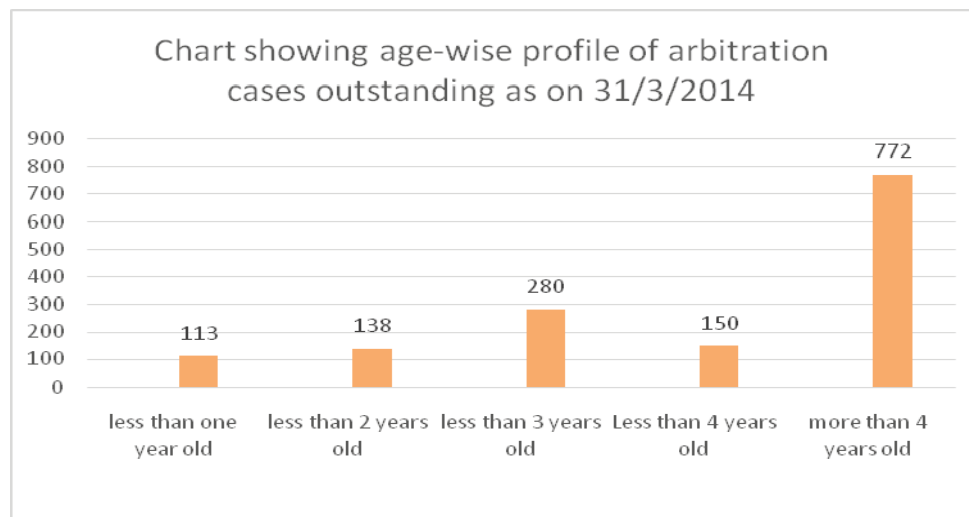
RB in their reply while accepting the audit observations stated that necessary directions have been issued to ensure timely recovery of dues on all accounts from contractors.

### 2.3.7 Arbitration

With the advent of the Arbitration and Conciliation Act in January 1996, Railways also revised the existing arbitration clauses in the Standard/General Conditions of Contract. Thus, the contractual clauses envisage not only a procedure for resolving disputes but also provide for timely disposal of these cases.

Zonal Railway wise data of Arbitration cases are captured in *Annexure XI and XII*. Analysis of data of Arbitration cases revealed the following:

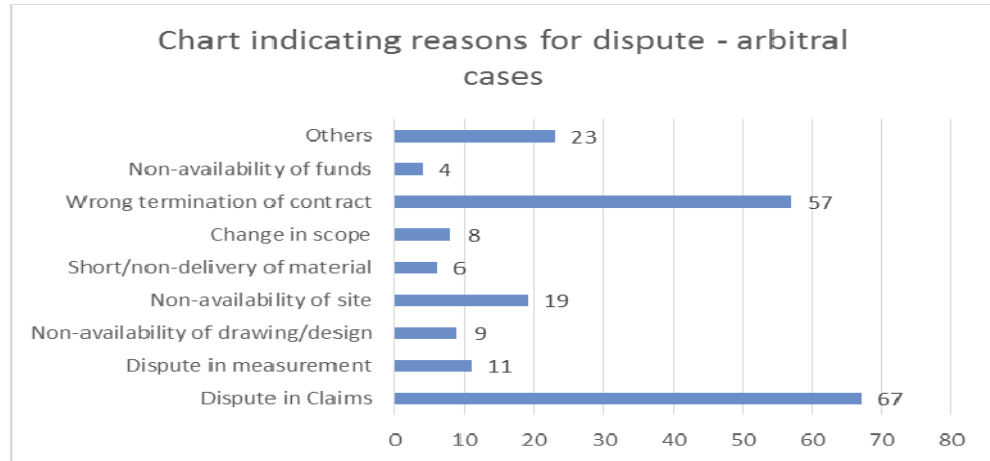
- There were 1,372 Arbitration cases pending as on 31-3-2011. During the period from 2011-12 to 2013-14, 466 new arbitration cases were added and 379 arbitration cases were settled. The age-wise profile of the Arbitration cases 1,453 outstanding as on 31-3-2014 is indicated below:



- Out of 379 cases, 101 cases were settled in favour of Railways and 278 cases were settled in favour of contractors. More than 73 per cent of cases (278 cases) decided against the Railways indicated poor contract management and improper dealing of arbitration cases by the Railways. An amount of ₹31.40 crore was paid by IR towards arbitral awards during

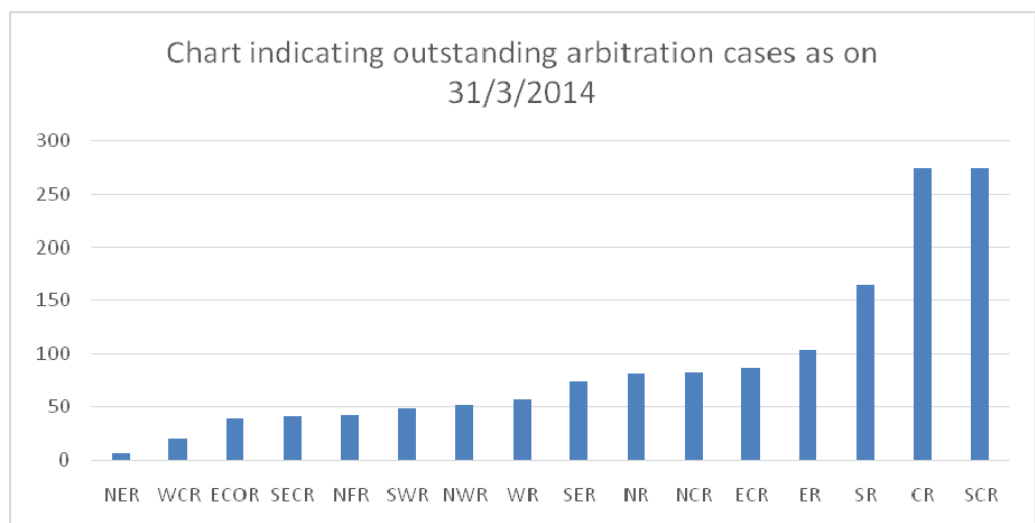
the period which could have been avoided by better contract management.

- The reasons for the disputes in the cases settled during the period 2011-12 to 2013-14 are indicated in the Graph given below:



These cases were regarding delay in payment of final bills and release of Security Deposit (SD)/EMD arising out of change in scope of work, delay on railways account due to site designs or funds or delay in making payment for variations pending approval. These disputes could have been avoided with better contract management practices. The Arbitration process itself was prolonged despite specific timelines prescribed for dealing with arbitration process such as referring to Arbitral Tribunal (120 days), submission of counter claim (60 days) etc. Audit observed in 89 cases (out of 214 cases) test checked where delays were noticed, the average time taken for referring the claim to arbitral tribunal ranged from 9 days to 1,856 days averaging to 515 days as against 120 days prescribed.

Zonal Railway wise position of outstanding arbitration cases is indicated below:



As against the time of 60 days provided for appointment of arbitral tribunals, there was delay in nomination of arbitration tribunal in 89 cases<sup>79</sup> (58 per cent). The time taken to refer to arbitration tribunal from date of recording claim ranged between 9 days (SWR) and 1,734 days (NWR) and 1,856 days (WR).

## 2.4 Conclusion

Efficient planning and effective implementation of each activity of tender processing and contract execution is essential to ensure timely completion of contracts. Audit examination, however, revealed lapses in tender planning, processing and contract management. E-tendering which ensures transparency in tendering process, is yet to be implemented fully in IR. Level of participation in tenders was less than two tenderers in more than 50 per cent of cases and needs urgent attention. Despite specific instructions by RB and their re-iteration from time to time that Railways should invite tenders only after completion of preparatory works, audit observed that the tenders were invited by the Zonal Railways without completing the required formalities which led to delay in execution of contracts. Only a very few contracts were completed within the due date mentioned in the contract and extensions were granted in a routine manner. Timely execution of works contracts is necessary for completion of maintenance works as well as Railway Projects for safe running of trains and infrastructure development of the Railways as delay in execution of these contracts will adversely affect the infrastructure development as well as safe running of the trains.

Improper contract management also led to discharge of tenders and foreclosure/short closure/termination of contracts resulting in additional expenditure on retendering. There were delays on the part of Railways in referring the claim of contractors to arbitration tribunal and majority of arbitration awards went in favour of contractors indicating poor/improper contract management and improper dealing of arbitration cases.

## 2.5 Recommendations

- I. *To ensure timely completion of contract works and for efficient utilization of resources, RB needs to ensure that the codal provisions of Indian Railway Engineering Code and various RB's instructions issued from time to time are strictly followed by the Zonal Railways right from tender planning stage to awarding and execution of contracts.*

<sup>79</sup>CR-12, ECR-4, WCR-4, SCR-20, ER-2, NR-1, NFR-5, NWR-7, SR-3, SER-8, SWR-9, NCR-2, ECoR-2, SECR-5, WR-5

- II. To avoid time and cost overrun, time-lines for various processes involved in tendering and awarding of contracts need to be clearly defined and monitored at appropriate stages.*
  - III. For maintaining transparency and achieving competitive rates, RB needs to take measures to introduce complete E-Tendering.*
- 