

CHAPTER–III
Transaction Audit Observations

CHAPTER III

3. Transaction Audit Observations

Important audit findings noticed as a result of test check of transactions made by the State Government companies/Statutory corporations are included in this Chapter.

Government Companies

Uttar Pradesh Rajkiya Nirman Nigam Limited

3.1 Construction of ESIC Medical Colleges and its Allied Works

3.1.1 The Uttar Pradesh Rajkiya Nirman Nigam Limited (Company) was incorporated in May 1975 with the objective to take up the civil construction work of the State Government and procure the work through bidding process and execute it under Department Construction Unit (DCU) system to avoid middlemen from the construction work.

The Board of Directors (BOD) of the Company permitted (July 2008) the execution of works through the sub-contractors. Under sub-contractor system of working, the Company sub-lets the whole work to sub-contractor in totality on the same terms and conditions as were applicable for the Company retaining only centage portion, receivable on the work from the client. The Employees State Insurance Corporation (ESIC) awarded (August 2008 to March 2012) the construction work of 31 Medical Colleges¹ to the Company out of which the Company executed seven works under DCU system and awarded construction of 24 medical colleges to the sub-contractors on the same terms and conditions as agreed upon with ESIC (back to back basis) as detailed in (*Annexure 3.1*).

The construction works of three Medical Colleges of ESIC located at Faridabad (Haryana), Basaidarapur (Delhi) and Alwar (Rajasthan) were selected for detailed examination. Deficiencies noticed during audit of three units are discussed in succeeding paragraphs:

Incorrect application of Cost Index

3.1.2 The Company received order for construction of ESIC Medical College and residential quarters at Faridabad from ESIC in July 2009. As per clause 13.8 of the Particular Conditions of the Contract executed (October 2009) between the Company and sub-contractor for construction work of ESIC Medical College, Faridabad, Contract Price was to be adjusted for changes in cost of labour, materials and other inputs on the basis of cost index issued by Central Public Works Department (CPWD) prevailing on the base date. The date of issue of Notice Inviting Tender (NIT) was to be taken as base date. The NIT was issued on 16 July 2009 and the cost index on 16 July 2009 was 13 *per cent* as notified by CPWD in June 2009.

We noticed that the Company provided cost escalation for Delhi Schedule Rate (DSR) items at the rate of 19 *per cent* (applicable from October 2008) instead of providing it at the rate of 13 *per cent* (applicable from April 2009)

The Company made an excess payment of ₹ 11.84 crore to the sub-contractor due to incorrect application of cost index

¹ The estimated cost of 31 construction work of Medical Colleges and its allied buildings along with maintenance and renovation works of its exiting hospitals during 2008 to 2012 was ₹ 4456.47 crore (revised to ₹ 4520.96 crore)

which was the cost index on 16 July 2009 *i.e.* the date of issuance of NIT by the Company. Thus, due to application of incorrect rate of cost index the Company made an excess payment of ₹ 11.84 crore to the sub-contractor leading to loss to the ESIC to that extent.

Management stated (November 2014) that cost index of 19 *per cent* was applied due to consideration of base date of 1 October 2008 as agreed with ESIC. Reply is not acceptable as audit observation is focused on agreement with the sub-contractor based on the terms and conditions agreed between Company and sub-contractor which entailed payment of escalation at the rate of 13 *per cent*.

Irregular reimbursement of Value added Tax to the Sub-contractor

3.1.3 The terms and conditions of Letter of Intents issued for all the three works provided that the awarded price is inclusive of all taxes, levies and cess etc. Moreover, works were awarded to the sub-contractors on the DSR basis which were inclusive of applicable taxes and duties. Contracts executed by the Company with the sub-contractors envisaged that Value Added Tax (VAT) shall be deducted at source by the employer at prescribed rate.

We noticed that the Company deducted VAT of ₹ 27.58 crore up to August 2014 from the bills of all the three sub-contractors and deposited the same with the tax authorities. We further noticed that the Company subsequently reimbursed the same to sub-contractors. Thus, the incidence of tax did not pass on to the sub-contractors. Reimbursement of VAT in addition to the awarded rates was irregular and led to extra payment to the sub-contractors to the tune of ₹ 27.58 crore.

Extra payment of ₹ 27.58 crore were made to the sub-contractors by reimbursement of VAT in addition to the awarded rates

The Management stated (September / November 2014) that the Company paid VAT to State Government as deducted from the bills of the sub-contractor, which was reimbursed by the ESIC to the Company and accordingly the same was reimbursed to sub-contractor by the Company.

Reply is not acceptable as ESIC reimbursed the VAT to the Company for taxes deposited with the tax authority by the Company, but Company's act of subsequent reimbursement to sub-contractors, unduly benefitted the sub-contractor in contravention of the conditions of the letter of intent.

Excess payment due to allowing higher rates for execution of work

3.1.4 The construction work of Medical College, Faridabad and Medical College, Basaidarapur were awarded in August 2009 and January 2010 respectively by the Company to sub-contractors at the estimated cost arrived at by ESIC on DSR 2007 basis. The NIT for both works were issued in July 2009.

We noticed that rate of three DSR items taken in the estimate prepared by ESIC for Faridabad project were higher by 14.99 to 44.16 *per cent* as compared to rate taken for Basaidarapur project without any reasons on record. The Company, without checking the rates of the estimates, awarded the work to same sub-contractor at the estimated cost which led to award of work at higher rate and excess payment of ₹ 1.44 crore (*Annexure 3.2*) to sub-contractor.

Excess payment of ₹ 1.44 crore were made by allowing higher rates for execution of works

The Management stated (November 2014) that the estimates and Bill of Quantity (BOQ) of both works were prepared and approved by ESIC itself and reason for lower rates were not provided by ESIC.

The reply is not acceptable as works were awarded by the Company to the same sub-contractor, not by the ESIC. Awarded rates were to be checked and regulated by the Company as both the works were awarded to the same sub-contractor against the tenders issued in the same month.

Avoidable expenditure on cartage of earth

3.1.5 The Bill of Quantity (BOQ) of hospital projects at Faridabad included earth work of 403611 Cubic Meter (CuM). Against, 339570.70 CuM earth excavated 71468.04 CuM earth was utilised for back filling and balance 258205.91 CuM earth was disposed off at an expenditure of ₹ 5.99 crore incurred on cartage thereof.

We observed that the concerned Project Manager asked Nagar Nigam, Faridabad (March 2010) and ESIC (April 2010) for providing space for dumping of the earth but did not ask for disposal of surplus earth through sale to avoid cartage as well as to make an effective utilisation of surplus earth.

Thus, due to not exploring possibilities for sale of surplus earth, the Company had to make an avoidable expenditure of ₹ 5.99 crore on cartage of surplus earth.

The Management stated (November 2014) that concerned department were asked telephonically for taking surplus earth but no offer was received. The fact remains that the Company did not explore the possibility for sale of surplus earth as it could not furnish any document to substantiate their reply.

Release of interest free mobilisation advance for capital building

3.1.6 The Company provided mobilisation advance to the sub-contractors at the rate of 10 *per cent* on the value of work to mobilise work subject to adjustment of the same from the running bills of the sub-contractors.

Central Vigilance Commission (CVC) guidelines (10 April 2007 and 8 October 1997) states that provision of mobilisation advance should be interest bearing so that contractor does not draw undue benefit. As per section 32.5 of CPWD Manual of 2007, the mobilisation advance can be sanctioned at interest rate of 10 *per cent* per annum. We noticed that interest free mobilisation advance of ₹ 102.37 crore was released to sub-contractors during February 2010 to February 2013 in Faridabad and Alwar projects in contravention to CVC guidelines, amounted to an undue benefit to the sub-contractors.

The Management stated that (November 2014) mobilisation advance was given to sub-contractors against Bank guarantee. The reply of the Management does not address audit observation regarding release of interest free advance.

3.1.7 The CVC guidelines prescribed (8 October 1997) that mobilisation advance shall not be utilised towards capital building. We observed that sub-contractor of ESIC Medical College, Alwar utilised (October 2012) mobilisation advance to the tune of ₹ 7.73 crore for purchase of machinery out of total mobilisation advance of ₹ 51.94 crore released to the sub-contractor (in two equal instalments November 2011 & February 2013). Thus, mobilisation advance utilised for capital building was a diversion of funds and should have been recovered with interest at the rate of 10 *per cent* (as per CPWD manual), which worked out to ₹ 1.03 crore from November 2011 to June 2013.

The Management stated (September 2014) that the sub-contractor utilised ₹ 7.73 crore for purchase of ready mix and plant mixer, JCB, Generator and

The Company incurred an avoidable expenditure of ₹ 5.99 crore on cartage of surplus earth due to not exploring possibilities for sale

Mobilisation advance of ₹ 102.37 crore was given to the sub-contractors in contravention of CVC guidelines

Non-recovery of interest ₹ 1.03 crore on mobilisation advance of ₹ 7.73 crore, used for capital building by the sub-contractor

equipment for laboratory etc. which were required for execution of works. The reply is not acceptable since CVC guidelines prohibit utilisation of mobilisation advance towards capital building.

Non receipt of centage on escalation bills

3.1.8 As per the clause 13.8 (VI) of the agreements executed (August 2009 to August 2011) between the Company and ESIC for all the three works, compensation for escalations was to be worked out at quarterly intervals with respect to the cost of work done as per bills paid during the three calendar months of the said quarter. The terms of the agreements (clause 20 of particular condition) also provided that in case of dispute of any kind between the parties, dispute were to be adjudicated by Dispute Adjudication Board (DAB), to be constituted jointly by the parties.

Centage of ₹ 5.61 crore on escalation bills remained unrealised for more than four years

We noticed that the Company submitted the escalation bills to ESIC during October 2010 to August 2014 in respect of all the three works for escalation charges including centage thereon. The ESIC, however, arbitrarily disallowed centage on the escalation bills submitted by the Company. The Company, despite the clear provisions in the agreements, did not make any effort for constitution of DAB and to get the issue resolved. Resultantly, centage of ₹ 5.61 crore (***Annexure 3.3***) claimed by the Company remained unrealised (November 2014) for more than four years.

The Management stated (November 2014) that ESIC was not paying centage on any escalation bills in any work and the Company has now decided to go into DAB. The fact remains that despite passage of four years, the Company did not initiated constitution of DAB as required to settle the dispute.

Non-recovery of labour Cess

3.1.9 Clause 7 of section 4.1.4 of the CPWD manual of 2007 prescribed that the effect of Building and Other Construction Workers' Welfare Cess Act 1996 as applicable, is also to be added in Estimate of work.

The Company paid labour cess of ₹ 27.09 lakh against centage portion from its own source and did not take any action to resolve the issue through DAB

We observed that the provision for labour cess was not made in the estimates of all the three works awarded by the ESIC. The Company, however, did not point out the irregularity of non provision of labour cess in the estimated cost of works awarded by ESIC. Subsequently, on demand made (May 2012) by the Company for payment of labour cess, ESIC refused payment and asked the Company to make payment at its own cost. The Company made payment of ₹ 9.36 crore² towards labour cess after deducting ₹ 8.97 crore from the bills of sub-contractor and ₹ 39.29 lakh from its own sources including ₹ 27.09 lakh against centage portion.

The Company, after refusal of its legitimate claim again and again by ESIC for payment of labour cess, did not take any action to resolve the issue through DAB. Resultantly, labour cess amounting to ₹ 27.09 lakh paid on centage portion of works at Faridabad and Basaidarapur was not reimbursed and led to ultimate loss to the Company.

The Management stated (September 2014) that the company deposited the cess on the value of work done including centage. The fact remains that due to management failure to get element of labour cess included in the estimate at

² Alwar ₹ 3.25 crore + Basaidarapur ₹ 1.33 crore + Faridabad ₹ 4.78 crore

the time of award of work by ESIC and thereafter not referring the dispute to DAB, the Company had to sustain loss of ₹ 27.09 lakh.

Above instances of undue benefit to contractors and lackadaisical approach of Company towards claiming centage from the client caused loss of ₹ 47.88 crore and ₹ 5.88 crore, respectively to the Company.

Matter was reported to the Government in July 2014, the reply of the Government is awaited (January 2015).

3.2 Undue favour to contractors

Undue favour to contractors resulted in avoidable expenditure on procurement of transformers at higher rate: ₹ 17.51 crore

Para 101 and 119 of the works manual of Uttar Pradesh Rajkiya Nirman Nigam Limited (Company) provided that the material rates be decided on the basis of market rate analysis and the item rates as per contract to be compared with analysed rates.

Uttar Pradesh Power Transmission Corporation Limited (UPPTCL) and Uttar Pradesh Power Corporation Limited (UPPCL) awarded construction works of twenty 220/132/33/11 KV sub-stations on turn-key basis to the Company during 2009 to 2011. Conditions of Letter of Intent (LOI) included that detailed estimate of the work was to be prepared and got approved by the competent authority of the Company for which UPPTCL/UPPCL would give financial sanction on the basis of lowest rates obtained in open tender.

Audit noticed that the Company finalised the rates of transformers forming part of Bill of Quantity (BOQ) without any analysis of the market rates, as no justification for rates assigned to BOQ items was found on records of the Company. UPPTCL/UPPCL approved the same BOQ rates. The Company awarded these works to sub-contractors at the approved BOQ rates.

Audit further noticed that in BOQ of the supply of electrical equipments, the rates assigned by the Company to ex-works price of 160/40/20/5 MVA transformer ranged between ₹ 0.44 crore to ₹ 7.10 crore, but the proforma invoice of suppliers who supplied these transformer to the sub-contractor, executing the work for the Company, revealed that the cost of transformers ranged between ₹ 0.18 crore to ₹ 5.38 crore only (*Annexure 3.4*). In absence of market rate analysis, Company failed to check the higher rate of transformers prior to award of work. Consequently, the BOQ rates and the rates awarded and paid to sub-contractors remained on higher side than the supplier's ex-works rate of the transformers by 7 to 55 per cent which resulted in avoidable expenditure of ₹ 17.51 crore on purchase of 30 transformers. (after allowing 10 per cent contractor's profit) (*Annexure- 3.4*).

Management stated that procurement of transformers was made on the rates approved by UPPTCL/UPPCL and the rates of the transformers given to sub-contractors were within the sanctioned cost approved by UPPTCL/UPPCL. The reply of the Management is not acceptable as the Company did not ensure the reasonableness of the rates assigned to transformers in BOQ through market rate analysis, as required by the ibid provisions of its works manual. Consequently, the price paid by the Company to the sub-contractor was higher

by ₹ 17.51 crore (25 per cent) as compared to the purchase cost borne by the sub-contractors for the same transformers.

Matter was reported to the Government in July 2014, the reply is still awaited. (January 2015).

3.3 Excess contribution to Employees' Provident Fund

Failure to limit employer's contribution towards Employees' Provident Fund as prescribed in the Employees' Provident Fund Scheme, 1952 resulted in excess contribution of ₹ 21.93 crore

Para 29 (1) of the Employees' Provident Funds Scheme, 1952 (Scheme) provides that the contribution payable by an employer under the scheme shall be twelve per cent of the basic wages, dearness allowance and retaining allowance (if any) payable to each employee to whom the Scheme applies. Para 26 A (2) of the Scheme provides that the contribution payable by the employee and employer shall be limited to the amount payable on a monthly pay of ₹ 6,500. However, para 29 (2) of the Scheme provides that the contribution payable by an employee to whom the Scheme applies, if he so desires, could be an amount exceeding the above limit subject to the condition that employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Scheme. Accordingly, all Public Sector Undertakings covered under the Scheme were required to restrict their contribution to the prescribed limit.

Audit noticed that the Uttar Pradesh Rajkiya Nirman Nigam Limited (Company) contributed employer's share at the rate of twelve per cent of the pay without applying the prescribed limit of ₹ 6,500 in contravention of the *ibid* provisions of the Scheme. This resulted in excess contribution of ₹ 21.93 crore in respect of 13562 employees (*Annexure-3.5*) who were members of the fund and were drawing monthly pay of more than ₹ 6,500 during 2007-08 to 2013-14 by the Company.

The Management stated (August 2014) that contributions are being paid as per the provisions of Section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (Act) and condition for limiting the contributions on maximum wage ceiling of ₹ 6,500 was relaxed (July 2010) by Assistant Provident Fund Commissioner (APFC), Bareilly³. The reply is not acceptable as Section 6 of the Act is to be read with Para 26 (6) and 26 (A) (2) of the Scheme which do not empower the employer to contribute over and above the limit fixed under Para 29. Moreover, the relaxation allowed was for employees contribution and not employer's contribution. Hence, the Company made excess employer's contribution in violation of the Employees Provident Funds Scheme, 1952.

The Company needs to review this practice to avoid such excess payment in future and also strengthen internal control mechanism to avoid such lapse.

The matter was reported to the Government (July 2014); their reply is however awaited (January 2015).

³ APFC Bareilly Zone allowed the Company to deduct contribution from employees pay on more than ₹ 6500 p.m. This was made applicable for the entire Company.

Dakshinanchal Vidyut Vitran Nigam Limited

3.4 Procurement of material by Electricity Distribution Circle, Jhansi

Procurement of materials without requirement and without sale of tender forms

As a result of unbundling of Uttar Pradesh State Electricity Board (UPSEB), Dakshinanchal Vidyut Vitran Nigam Limited (Company) was incorporated in August 2003 for supply of electricity and collection of revenue from the consumers besides procurement of material. The Company classifies the material procurement activity in two categories, namely centralised material (Material procured at Company headquarters) and decentralised material viz. LT Distribution Boxes, Vacuum Interrupter etc. procured to meet the urgent requirement of the Electricity Distribution Divisions (EDD).

Electricity Distribution Circle (EDC), Jhansi did not maintain the base records for exercising control over the procurement activities. In the absence of control registers, actual number of tenders invited/finalised and purchase orders issued could not be ascertained by audit. Consequently, Audit analysed the records of Electricity Store Division (ESD), Jhansi and found that tenders valuing ₹ 112.25 crore were finalized by EDC Jhansi for procurement of material during January 2011 to May 2013. Out of the above, records of tenders valuing ₹ 100.37 crore (89 *per cent*) were informed as stolen. Irregularities noticed are discussed in succeeding paragraphs:

Irregularities in tender process

3.4.1 Examination of 127 files relating to procurement of material valuing ₹ 11.88 crore by Superintending Engineer (SE), EDC Jhansi revealed that in all cases availability of material from concerned store division and in 125 cases valuing ₹ 11.76 crore, even the requirement of material by user division was not on records. Irregularities noticed are discussed below:

- As per Uttar Pradesh Power Corporation Limited (UPPCL) order (February 2003) the SE, Distribution was authorized to purchase material valuing ₹ two lakh per month. SE, EDC Jhansi violated the above limit in all 127 cases and placed Purchase Orders (POs) ranging from ₹ 10 lakh to ₹ 3.60 crore per month (***Annexure 3.6***) during January 2011 to December 2012.

Management stated (June 2014) that the orders were placed after approval of competent committee. The reply is not acceptable as delegation of financial powers to any competent committee was not allowed under the order issued by UPPCL.

- As per UPSEB order (April 1970), tendering authority, before accepting a tender needs to see that no cartel is formed against the Company.

We observed that out of 127 tenders, 70 tenders worth ₹ 6.40 crore (i.e. 54.32 *per cent* of the total value) were awarded to three firms and in each case other participating tenderers were same which clearly indicates that cartel was formed. Non publishing of notice inviting tenders in news papers having wide publication and no uploading of the tenders on official website of the Company were the main reasons for formation of cartel. As a result, competitive rates could not be obtained.

Management stated (June 2014) that the practices of publishing tender in newspapers having wide publicity and uploading the tender on official site has been started now.

Procurement of material

3.4.2 Besides above, cross examination of records, maintained at ESD Jhansi for procurement activities made by the EDC Jhansi (January 2011 to May 2013) for the transactions recorded in the stolen records as well as records produced to Audit, revealed the deficiencies as discussed in the succeeding paragraphs:

- As per order of February 2003 issued by UPPCL, the procurement of material by the EDC should be made on the basis of open tenders. The cash book of EDC, Jhansi, revealed that tender forms against tender number 1 to 235, tender number 1 to 894⁴ and tender number 1 to 860 were sold during 2010-11, 2011-12 and 2012-13 respectively for procurement of material. We observed that in 55 cases purchase orders valuing ₹ 5.49 crore (against total procurement of ₹ 112.25 crore) were issued without sale of tender forms (**Annexure 3.7**). The tender numbers were mentioned in POs just to show the legitimacy of tenders, no such tender forms were actually sold as per cash book.

Management stated (June 2014) that related records are missing.

- As per UPSEB order dated 7 April 1977 the procurement of decentralised material was to be made for the quantity, equal to three months requirement. We observed that SE, EDC Jhansi did not assess the requirement of material. Analysis of the inventory position of major items valuing ₹ 11.80 crore out of ₹ 112.25 crore procured till March 2013, revealed that the material valuing ₹ 0.09 crore (one *per cent*) could only be utilized against the same till March 2014 (**Annexure 3.8**).

Management stated (June 2014) that the SE, EDC, Jhansi procured the material to ensure its utilisation in reasonable period. The reply is not acceptable as the utilisation of materials was only one *per cent*.

Thus EDC, Jhansi placed purchase orders beyond the prescribed financial limits, without inviting tender through wide publicity and procured material without requirement in violation of orders of UPPCL and UPSEB.

Matter was reported to the Government in June 2014, the reply of the Government is awaited (January 2015).

U. P. Electronics Corporation Limited

3.5 Short claim of Institutional charges and undue benefit to supplier

The Company suffered loss of ₹ one crore due to short levy of institutional charges and undue benefit to suppliers

During the period 2009-10 to 2013-14, U. P. Electronics Corporation Limited (Company) made purchases of computers, printers, scanners and other equipments (Hardware/Software) valuing ₹ 105.74 crore for different Government departments other than purchase of Laptops under the “Scheme of free distribution laptops to class twelfth pass students in the State”. Cases of

⁴ As per Cash Book tender forms for tender no. 23, 24 and 358 to 364 of 2011-12 were not sold.

short claim of institutional charges and undue benefit to suppliers are discussed in the succeeding paragraphs:

Short claim of Institutional Charges

3.5.1 As per Board of Directors (BoD) order (March 2003 and June 2006), Institutional Charges (IC) were to be charged at the rate of four to seven *per cent* from the clients on the total cost of projects of supply of hardware and software. Further, BoD ordered (December 2005) that Managing Director (MD) can reduce the rates but *post facto* approval of the BoD need to be obtained in next meeting of the BoD.

We noticed that the Company charged IC on the basic cost of the project excluding VAT/Service Tax in place of total cost which resulted in short charging and recovery of IC by ₹ 39.59 lakh.

We further noticed, that Company short charged IC amounting to ₹ 18.75 lakh on the supplies valuing ₹ 10.47 crore made during April 2009 to April 2012 by reducing the rate of IC, without subsequent approval of the BoD.

The Government while accepting the fact, stated (October 2014) that charging of institutional charges on total project cost would result in additional payment by the Government to the Company. Fact remains that IC was short charged and Company suffered loss of revenue to that extent. It further, stated (October 2014) that MD was authorised to fix/ reduce the institutional charges. Fact remained that *post facto* approval of BoD was not taken by the MD.

Undue benefit to supplier

3.5.2 Review of records of the Company for the period 2009-10 to 2013-14 revealed that the Company extended undue benefit to the suppliers in the following cases:

(i) The Company invited tenders on 11 November 2011 for procurement of 373 Desktop computers with accessories for supply to Basik Shiksha Adhikari (BSA) of ten districts. Price offered by the supplier was further adjustable as per the requirements of client department (29 November 2011). The Company issued ten supply orders during December 2011 to January 2012 for supply of 373 Desktop computers with accessories at different rates against the above tender.

We noticed that the Company made no effort to get the whole supply at lowest rate available despite having opportunity of adjustment in price offered by supplier. This resulted in loss to the exchequer to the tune of ₹ 26.60 lakh (*Annexure 3.9*).

The Government stated (October 2014) that the difference in rates was due to fluctuation of exchange rates of dollars. The reply is not acceptable as there was no such clause in the supply order.

(ii) The Company placed three orders of ₹ 12.18 crore on a supplier during September 2010 to December 2010 for supply, installation and maintenance of computer hardware, system software and other related items under the National e-Governance Plan (NeGP) of Uttar Pradesh. Supply orders did not include any condition for providing advances to the suppliers.

The Company released interest free advance of ₹ 6.86 crore (56 per cent of order value) during October 2010 to January 2011. These advances were adjusted after a period of 52 to 316 days. This led to undue benefit to the suppliers besides loss of interest of ₹ 15.13 lakh to the Company.

The Government accepted and stated (October 2014) that an enquiry has been initiated (September 2014) to look into the circumstances under which advances were given to the suppliers.

Thus, short levy of IC and undue benefit to supplier caused loss of ₹ one crore to the Company.

3.6 Non-charging of 'e-tendering fee'

Non-charging of e-tendering fee for publishing of e-tenders on e-portal: ₹ 62 lakh

The State Government of Uttar Pradesh introduced (January 2008) e-procurement system in the State and nominated U.P. Electronics Corporation Limited (Company) as State nodal agency. For implementation of the system, e-portal of Director General of Supplies and Disbursements (DGS&D) was to be used by the Company. The State Government departments (procuring agencies) were required to publish tenders on the e-portal with payment of e-tendering fee to the Company at the rate of 0.01 per cent of tender value subject to minimum ₹ 250 and maximum ₹ 5000 for each tender published on e-portal.

We noticed that the Company provided the facility of e-procurement through the e-portal of National Informatics Center (NIC) but did not charge e-tendering fee at the rate of 0.01 per cent of the tender value from the user departments in respect of 4342 tenders valuing ₹ 15499.96 crore during the period June 2008 to January 2014. This resulted in non-recovery of revenue of ₹ 62 lakh.

The Management (July 2014) and Government (September 2014) stated that e-tendering fees was not charged because the e-portal of DGS&D was never used by the Company for implementing the e-procurement system in Uttar Pradesh. Rather, the portal of NIC was used.

The reply of the Government is not acceptable as the Company provided the e-procurement facility through e-portal of NIC. As e-procurement is an information technology software service in terms of section 65 (105) (zzzze) of Finance Act, 1994 hence, e-tendering fees was to be charged for providing the e-procurement facility and not for providing a specific portal. Thus, e-tendering fees was recoverable from all user departments irrespective of the e-portal used by the Company.

Uttar Pradesh Samaj Kalyan Nirman Nigam Limited

3.7 Avoidable expenditure on procurement of cement

The Company incurred avoidable expenditure of ₹ 1.69 crore in procurement of cement due to non-execution of Rate Contracts

Rule 141 and 147 of General Financial Rules (G.F.R.), 2005 prescribes that Rate Contracts can be concluded for items which are of standard types, which are identified as common user items and are needed on recurring basis. Rule

137 of the G.F.R. further provides that the procuring authority has the responsibility and accountability to ensure economy in public procurement.

Uttar Pradesh Samaj Kalyan Nirman Nigam Limited (Company) is one of the apex construction agencies of Government of Uttar Pradesh (GoUP) along with other Public Sector Undertakings⁵. In order to affect economy and to ensure quality in execution of the projects, procurement of vital inputs such as cement is of utmost importance. There is no system in the Company to procure cement on the basis of Rate Contracts, rather all 83 units of the Company in the State procure cement at unit levels on the basis of Purchase Committee Reports (PCRs).

Audit noticed that due to non-availability of defined system of purchase through Rate Contracts to maintain economy in execution of work, rates of procurement of cement by the Company remained higher as compared to the corresponding procurement rates of cement of Uttar Pradesh Rajkiya Nirman Nigam Limited (UPRNN) during the period 2008-09 to 2012-13.

Test Check of 25 units, revealed, that the Company procured 862794 bags of Portland Pozzolana Cement (PPC) at the rates ranging between ₹ 180 per bag to ₹ 315 per bag on the basis of Purchase Committee Reports from local suppliers; whereas, during the same period (2008-09 to 2012-13) UPRNN procured cement at the contracted rate ranging between ₹ 163 per bag and ₹ 290 per bag. It resulted in extra expenditure of ₹ 1.69 crore on procurement of 862794 bags of PPC cement due to system lapse of not preparing Rate Contracts for purchase of such material of utmost importance.

The Management (August 2014) and the Government (September 2014) stated that the Company has large number of units scattered in various districts of Uttar Pradesh and executes projects of low costs. Thus, purchasing at centralized location under Rate Contract would add to transportation cost. The reply of the Management is not convincing as UPRNN too has large number of units scattered in all districts of Uttar Pradesh and they have the system of preparing Rate Contracts. Moreover, the Company had purchased PPC cement bags in bulk quantity every month approximately ranging between 1000 to 4000 bags which is a sufficient quantity to avail economics of scale.

Purvanchal Vidyut Vitran Nigam Limited

3.8 Excess payment to franchisee

Non-adherence to the applicable rate of commission by the division under Purvanchal Vidyut Vitaran Nigam Limited resulted in excess payment of ₹ 30.54 lakh

Pursuant to the State Government order dated 28 May 2006, the collection based rural franchisees were appointed (during January 2008 to May 2011) by the Purvanchal Vidyut Vitran Nigam Limited (Company) in rural areas for realisation of revenue. Agreements were entered into with the various franchisee firms for realisation of revenue in respective feeder area and

⁵ Other apex construction agencies of GoUP are Uttar Pradesh Rajkiya Nirman Nigam Limited (UPRNN), U.P. Jal Nigam and U.P. Projects Limited.

franchisees were to perform the work of connection, disconnection, collection of arrears and detection of theft cases etc.

Further, Uttar Pradesh Power Corporation Limited notified (September 2010, October 2010) that calculation of commission on revenue collected by franchisees would be made on monthly collection basis at a percentage prescribed for each slab of revenue assessment. It further provided that during the period of implementation of One Time Settlement (OTS) Scheme, the calculation of commission on revenue collected by franchisees would be made at the flat rate of five *per cent* of their total revenue collected. During the year 2011-12 and 2012-13, OTS remained in operation for the period of July 2011 to October 2011 and April 2012 to May 2012.

We noticed that 10 franchisees collected revenue of ₹ 5.66 crore in Electricity Distribution Division, Gorakhpur of Company during the aforesaid OTS period. Instead of applying the prescribed rate of five *per cent* during OTS period, the division paid commission of ₹ 58.82 lakh by using slab rates. This resulted in excess payment⁶ of commission of ₹ 30.54 lakh to franchisees.

Matter was reported to Management and Government in May 2014, the reply is still awaited (January 2015).

3.9 Undue favour to contractor

The Company provided undue benefit of ₹ 55 lakh to UPRNN by making additional payment of VAT on awarded rate of electrical equipments, worked out on the basis of RESPO rates which include VAT

The Purvanchal Vidyut Vitran Nigam Limited (Company) awarded eight construction works of 33/11 KV Sub-stations and lines along with 11 KV feeders at a cost ₹ 25.46 crore during the year 2010-11 to the Electrical Unit, Varanasi of Uttar Pradesh Rajkiya Nirman Nigam Limited (UPRNN). These works included an amount of ₹ 1.65 crore of Value added Tax (VAT).

Rates as prescribed by Rural Electrification and Secondary System Planning Organisation (RESPO) a wing of Uttar Pradesh Power Corporation Limited, were used to work out the rates of the works awarded. RESPO rates were determined on the basis of the rates of equipment and materials as prescribed by stock issue rate of Uttar Pradesh Power Corporation Limited (UPPCL) and includes VAT.

We noticed that despite including VAT element in awarded rates, Company awarded and paid the rates with additional amount of VAT on three items i.e. ACSR dog conductor, ACSR weasel conductor and 5 MVA transformers at the rate of 12.5 *per cent* to UPRNN. Such additional award and payment of VAT resulted in undue benefit of ₹ 55 lakh to the UPRNN.

Management accepted (December 2014) the audit observation and stated that action for recovery would be taken.

Matter was reported to Government in September 2014, the reply is still awaited (January 2015).

⁶ August 2011, December 2011, February 2012, April 2012, June 2012 to September 2012.

Purvanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited, Paschimanchal Vidyut Vitran Nigam Limited and Dakshinanchal Vidyut Vitran Nigam Limited

3.10 Non deposit of compounding charges

The Distribution companies failed to deposit the compounding charges collected from consumers in the Government exchequer

As per Rule 7 of chapter 2 of General Financial Rules 2005, all moneys received by or on behalf of the Government either as dues of Government or for deposit, remittance or otherwise, shall be brought into Government Account without delay.

The Distribution Companies (DISCOMs) i.e. Purvanchal Vidyut Vitran Nigam Limited (PuVVNL), Madhyanchal Vidyut Vitran Nigam Limited (MVVNL), Paschimanchal Vidyut Vitran Nigam Limited (PVVNL), Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL) and Kanpur Electricity Supply Company Limited (KESCO) on behalf of the State Government collected the compounding charges amounting to ₹ 151.24 crore⁷ (March 2013) from the consumers or persons suspected of having committed an offence of theft of electricity against the assessment of raid cases for not instituting any proceedings in any criminal court, but did not deposit the same in Government Exchequer (March 2014).

In response KESCO took the corrective action and communicated (November 2014) the deposition of entire compounding balance to State Government. But other DISCOMs have still not taken corrective action. Thus, a sum of ₹ 144.60 crore remained non deposited in Government Exchequer for its utilisation in social benefits by State Government. Besides, it attracted a penal interest of ₹ 26.03 crore⁸ for 2013-14.

Matter was reported to Government in October 2014, the reply is still awaited (January 2015).

Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited

3.11 Delayed action to use auto sweep facility

Company delayed the use of auto sweep facility for current bank accounts and suffered the loss of interest amounting to ₹ 52 lakh

Banks provide auto sweep facility to their customers, on their request, to enable automatic investment of surplus funds lying in current accounts into term deposits. It also allows automatic encashment of term deposits when funds are required to meet an impending expenditure. Interest at the minimum rate of four per cent per annum is provided on the amount transferred to term

⁷ PuVVNL = ₹13.84 crore, MVVNL = ₹ 25.42 crore, PVVNL= ₹76.47 crore, DVVNL= ₹ 28.87 crore and KESCO = ₹6.64 crore

⁸ Considering the same as statutory duty which attracts penalty at the rate of 18 per cent per annum as per Rule 3 (3) of Uttar Pradesh Electricity (Duty) Rules, 1952 applicable for Electricity Duty.

deposits from current account for a minimum period of 7 to 14 days. The threshold limit for transfer to term deposits from current account is ₹ one lakh.

It was noticed that Harduaganj Thermal Power Station Extension (HTPS) of Uttar Pradesh Rajya Vidut Utpadan Nigam Limited (UPRVUNL) operates two current accounts with State Bank of India and one with Punjab National Bank which held minimum balances of ₹ 0.47 lakh to ₹ 25.64 crore during the period from January 2011 to February 2014. Banks do not provide interest on current accounts but HTPS did not opt for auto sweep facility for all the three accounts. Issue was pointed out by Audit in November 2010 but HTPS delayed the action thereon from 25 to 28 months. Due to delayed action in obtaining auto sweep facility in current accounts even after being pointed out by audit, the HTPS suffered a loss of interest amounting to ₹ 52 lakh during the period from January 2011 to February 2014.

Management stated (August 2014) that based on audit observation letters were issued to banks. Reply is not acceptable as there was no proper pursuance with bank which delayed the conversion of current account to auto sweep facility account.

Matter was reported to Government in July 2014, the reply is still awaited (January 2015).

Uttar Pradesh Power Transmission Corporation Limited

3.12 Loss due to negligence in obtaining insurance policy

The company failed to persuade the PGCIL for taking insurance cover and further kept no penalty clause which caused loss of ₹ 1.42 crore

An agreement for operation and maintenance of 400 KV DC Vishnuprayag-Muzaffar Nagar (VSP-MOZ) transmission line was executed by Uttar Pradesh Power Transmission Corporation Limited (UPPTCL) with Power Grid Corporation of India limited (PGCIL) on 11 July 2007 for the period from 26 April 2007 to 25 April 2008. As per the terms of the agreement, the insurance of the transmission line was to be arranged by the PGCIL at the cost of UPPTCL but no penalty clause was there in the agreement for PGCIL's negligence, if any in taking insurance coverage.

We noticed that 400 KV Sub Station Division Muzaffar Nagar of UPPTCL failed to persuade PGCIL for taking insurance. PGCIL delayed it and took the standard fire and peril policy in December 2007 covering the period from December 2007 to December 2008. Meanwhile in the month of October-November 2007, three numbers of towers of 400 KV VSP-MOZ line on the right bank of river Alaknanda got damaged due to landslide. As no insurance coverage was available for the same period so no claim of insurance could be taken and company sustained a loss of ₹ 1.42 crore⁹ for the damages took place.

Unit management stated (April 2014) that insurance was to be taken by the PGCIL, which has delayed it and matter was under reconciliation with them.

⁹ Compensation/claim which could have been received from insurance company = ₹ 331.94 crore X 3 Towers/701 towers = ₹ 1.42 crore

Reply is not acceptable as company failed to persuade the PGCIL for taking insurance cover and further kept no penalty clause in the agreement entered with PGCIL for such negligence which caused loss of ₹ 1.42 crore. As substantial period of more than six years had already lapsed chances of recovery from PGCIL are remote.

Matter was reported to Government in July 2014, the reply is still awaited (January 2015).

Statutory Corporations

Uttar Pradesh State Road Transport Corporation

3.13 Avoidable payment of Low Tension Surcharge

Regional Workshop Bareilly incurred an avoidable expenditure of ₹ 21.80 lakh due to non-migration from Low Tension (LT) line to High Tension (HT) line

As per the provisions of section 62(3) of Electricity Act, 2003, U.P. State Electricity Regulatory Commission (UPERC) issues tariff schedule to bill the consumers under different categories for LT and HT lines on the basis of contracted load and supply voltage.

The tariff order of 2004-05 provided option to all LT line consumers having contracted load above 56 KVA and getting supply at 0.4 kV (supplied through 11 kV line - HT category) either to get billed under HV-2 category on payment of LT surcharge of 15 per cent or to migrate to HV-2 category on bearing expenses for conversion from LT line to HT line. Vide tariff order of 2006-07, all such LT consumers, who did not migrate to HT line, were to be mandatorily get billed under HV-2 category on payment of LT surcharge.

Uttar Pradesh State Road Transport Corporation, Regional Workshop Bareilly (Workshop) having a LT connection for the contracted load of 130 KVA at 0.4 kV supply voltage, was instructed (August 2009) by Executive Engineer, Electricity Urban Distribution Division, Bareilly (EUDD) to convert LT line to HT line. EUDD intimated (November 2009) the workshop that the estimated cost of conversion was ₹ 5.68 lakh.

Audit noticed that after Managing Director sanctioned (January 2010) ₹ 5.68 lakh for conversion of line, the workshop, instead of depositing the amount with EUDD to initiate the process for the conversion, continued to get billed under HV-2 category on payment of LT surcharges. During April 2006 to September 2012¹⁰ workshop paid ₹ 23.98 lakh towards LT surcharge. Further due to non conversion of LT line supply to HT line supply, workshop failed to get its contracted load enhanced to meet its load requirement. During April 2006 to May 2014 workshop paid additional demand charges of ₹ 3.50 lakh on use of excess load. But the workshop did not initiate the process for conversion of line.

The Management stated (October 2014) that action for conversion of line was delayed due to unawareness of the tariff provisions from April 2006 to August 2009. Further, as per revised tariff schedule there is no difference in billing cost for LT and HT line connections above 50 KVA. The reply of the Management is not acceptable as the reported loss pertains to the period when

¹⁰ W.e.f. 01.10.2012 no LT surcharge was payable for billing under HV-2 category.

there was difference in billing cost of LT and HT lines and extra payment on account of excess load utilisation still continued. Thus, inaction on the part of Management to take appropriate steps for the conversion of LT line to HT line resulted in the avoidable expenditure of ₹ 21.80 lakh¹¹.

The matter was reported to the Government in July 2014; the reply is still awaited (December 2014).

Uttar Pradesh Jal Nigam

3.14 Undue favour to the Contractor

Undue favour to the Contractor by allowing changes in the bid submitted and subsequent reimbursement of service tax and entry tax of ₹ 2.92 crore

Rule 160(x) and Rule 160(xi) of General Financial Rules (G.F.R.), 2005 prescribes that bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids and bids received should be evaluated in terms of the conditions already incorporated in the bidding document.

Ganga Pollution Control Unit, Ghaziabad invited tender (25 September.2008) for works¹² on turn key basis under 100 cusec water supply scheme from Upper Ganga Canal for Noida & Trans Hindon Area, Ghaziabad. Tender conditions required that bidders should make sufficient provision for local taxes and unless specifically provided rates and prices in the price schedule shall be deemed to cover all contractual obligations.

Four bidders submitted bids in response to tender notice. During comparison of bids on bid opening date (17 July 2009), it was found that three bidders had mentioned certain additional taxes to be reimbursed over and above their quoted bid rates while the fourth bidder (Contractor) did not mention any tax to be reimbursed separately over its quoted bid rate. The bid of the Contractor was found lowest with bid value of ₹ 57 crore.

Audit noticed that while awarding (12 August 2009) the work to the contractor the bid value of ₹ 57 crore was irregularly inflated to ₹ 59.92 crore by providing reimbursement of 4.12 *per cent* service tax and 1.00 *per cent* entry tax to the Contractor on actual basis. This enhancement in the bid value was given considering the letter received from the Contractor after finalization of tender on bid opening date (17 July 2009). Changes requested in the bid already submitted, were an afterthought of the bidder and consideration of changes in the bid after opening of the same indicates undue favour to the Contractor, besides violation of G.F.R.

Thus, the Contractor was given undue favour by allowing reimbursement of service tax and entry tax of ₹ 2.92 crore although reimbursement of taxes was mentioned neither in the bid document nor in the comparative statement.

Management and Government (December 2014) accepted that the amount of Service tax and Entry tax was intimated separately by the bidder on tender opening date which was considered and added in the value of the contract.

¹¹ ₹ 23.98 lakh add ₹ 3.50 lakh less ₹ 5.68 lakh.

¹² Survey, Design, Supply, Erection, Construction, Commissioning and Trial Run of Primary Settling Basins other related works at Pratap Vihar, Ghaziabad

Thus, the fact remains that consideration of changes in the bid after its opening and finalisation were an undue favour to the Contractor.

3.15 Extra expenditure on purchase of transformers

The Nigam incurred extra expenditure on purchase of transformers resulting in undue favour of ₹ 62 lakh to contractor

Uttar Pradesh Power Transmission Corporation Limited (UPPTCL) awarded (September 2010) the work of construction of 132/33 KV sub-station at Kunderki, Mordabad to the Construction and Design Wing, Uttar Pradesh Jal Nigam (Nigam) at an estimated cost of ₹ 12.06 crore.

The Nigam prepared a detailed estimate of ₹ 12.79 crore for the above work and in turn, awarded (February 2011) the work to contractor on turnkey basis at a cost of ₹ 12.03 crore. An agreement was entered into (April 2011) between Nigam and the contractor for execution of work. The agreement included supply of two 20 MVA, 132/33 KV transformers for which a detailed order containing price schedule was provided to the contractor. We, however, did not find on record, the analysis of rates or any justification to arrive at the price.

We noticed that the contractor supplied two 20 MVA transformers to the Nigam at a cost of ₹ 2.75 crore. But the proforma invoice of manufacturer who supplied the transformers to the contractor revealed that the landed cost of transformers was ₹ 1.94 crore only. Thus, the price of two transformers paid by the Nigam to the contractor was higher by ₹ 81 lakh (42 per cent) compared to their purchase cost borne by the contractor. The Nigam, in the absence of rate analysis, failed to check the higher rate of transformers allowed to the contractor which resulted in excess expenditure of ₹ 62 lakh¹³ (after allowing 10 per cent contractor's profit).

The Management and Government stated (January 2015) that the agreement with the contractor was entered into on turnkey basis and estimated cost of work was below the estimate approved by UPPTCL. The reply of the Management is not acceptable as detailed order containing price schedule for individual items was provided to the contractor and in the absence of analysis of rates, the rates of transformers allowed to contractor remained higher than their landed cost by 42 per cent. Thus undue favour of ₹ 62 lakh was passed on to the contractor.

General

3.16 Follow up action on Audit Reports

3.16.1 Audit Reports of the Comptroller and Auditor General of India represent the culmination of the process of scrutiny starting with initial inspection of Accounts and records maintained in various offices and departments of the Government. It is, therefore, necessary that they elicit appropriate and timely response from the Executive.

Audit Reports for the years 2008-09 to 2012-13 were placed in the State Legislature in February 2010, August 2011, May 2012, September 2013 and June 2014 respectively. Out of 95 Paragraphs/Performance Audits involving PSUs under 22 Departments featured in the Audit Reports (Commercial) for

¹³ ₹ 2.75 crore (amount paid by the Nigam) – ₹ 1.94 crore (cost to contractor) – ₹ 0.19 crore (10 per cent contractor's profit).

the years from 2008-09 to 2010-11 and Audit Report (Public Sector Undertakings) for the year 2011-12 to 2012-13, no replies in respect of 81 Paragraphs/Performance Audits have been received from the Government by 30 September 2014 as indicated below:

Table No. 3.1

Year of Audit Report	Total Paragraphs/ Performance Audits in Audit Report	No. of departments involved	No. of paragraphs/ Performance Audits for which replies were not received
2008-09	27	22	21
2009-10	16	7	11
2010-11	16 ¹⁴	7	13
2011-12	16	5	16
2012-13	20	6	20
Total	95		81

Department wise analysis is given in *Annexure-3.10*. The Energy Department was largely responsible for non-submission of replies.

Compliance with the Reports of Committee on Public Undertakings (COPU)

3.16.2 In the Audit Reports (Commercial) for the years 1999-2000 to 2010-11 and Audit Report (Public Sector Undertakings) for the year 2011-12 to 2012-13, 379 paragraphs and 52 Performance Audits were included. Out of these, 161 paragraphs and 22 Performance Audits had been discussed by COPU up to 31 December 2014. COPU had made recommendations in respect of 113 paragraphs and 20 Performance Audit of the Audit Reports for the years 1978-79 to 2006-07.

As per the working rules of the COPU¹⁵, the concerned departments are required to submit Action Taken Notes (ATNs) to COPU on their recommendations within three months. The ATNs are, however, furnished by the departments to us, only at the time of discussion of ATNs by COPU.

Response to Inspection Reports, Draft Paragraphs and Performance Audit

3.16.3 Audit observations noticed during audit and not settled on the spot are communicated to the heads of PSUs through Inspection Reports. The heads of PSUs are required to furnish replies to the Inspection Reports within a period of four weeks. Inspection Reports issued up to March 2014 pertaining to 41 PSUs disclosed that 15809 Paragraphs relating to 3801 Inspection Reports remained outstanding at the end of September 2014. Department-wise break-up of Inspection Reports and audit observations outstanding at the end of 30 September 2014 are given in *Annexure-3.11*.

Similarly, Draft Paragraphs and Performance Audit on the working of PSUs are forwarded to the Principal Secretary, Finance and the Principal Secretary/Secretary of the administrative department concerned demi-officially seeking confirmation of facts and figures and their comments thereon within a period of six weeks. Out of 15 Draft Paragraphs and 2 Performance Audit Report forwarded to the various departments between May and October 2014, the Government has given reply of five Draft Paragraphs only and no reply has been given to remaining Draft Paragraphs and Performance Audit Report so far (December 2014), as detailed in *Annexure-3.12*.

¹⁴ Includes standalone Performance Audit Report on Sale of Sugar Mills of Uttar Pradesh State Sugar Corporation Limited.

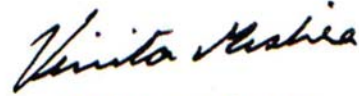
¹⁵ Government notification No. 836/VS/Sansadiya/85 (C)/2005 dated 28 March 2005.

We recommend that the Government should ensure that (a) procedure exists for action against the officials who failed to send replies to inspection reports/draft paragraphs/Performance Audit and Action Taken Notes on recommendation of COPU as per the prescribed time schedule, (b) action to recover loss/outstanding advances/overpayment in a time bound schedule, and (c) the system of responding to audit observations is revamped.

Lucknow

The

30 MARCH 2015



(VINITA MISHRA)

Accountant General

(Economic and Revenue Sector Audit),
Uttar Pradesh

Countersigned

New Delhi

The 31 MAR 2015



(SHASHI KANT SHARMA)

Comptroller and Auditor General of India