

Chapter III

Project Implementation

The works under Phase-I of the Project (Lifting Components) were awarded during March 2014 and the civil works including construction of MS Raising Main (pipeline) have been completed as of March 2019. The executing divisions of VJNL started submitting proposals (February 2015) for land acquisition in respect of Phase-II works after a delay of more than one year and the award of Social Impact Assessment studies commenced (July 2016) after two years of approval of DPR-II and commencement of Phase-I works. This resulted in cascading delay for other stages of land acquisition and corresponding delay of more than three years in awarding of works under Phase II. The assets created under Phase-I at the cost of ₹2,965.77 crore could not be put to use due to non-completion of the Gravity Canal for conveying the lifted water to the beneficiary districts. The electro-mechanical equipment such as pumps/motors installed under Phase I works could not be tested/commissioned and were kept idle consuming significant portion of their useful life. The lack of synchronisation between works taken up under Phase-I and Phase-II resulted in creation of infrastructure in patches leading to idling of assets and non-achievement of the objective of the Project

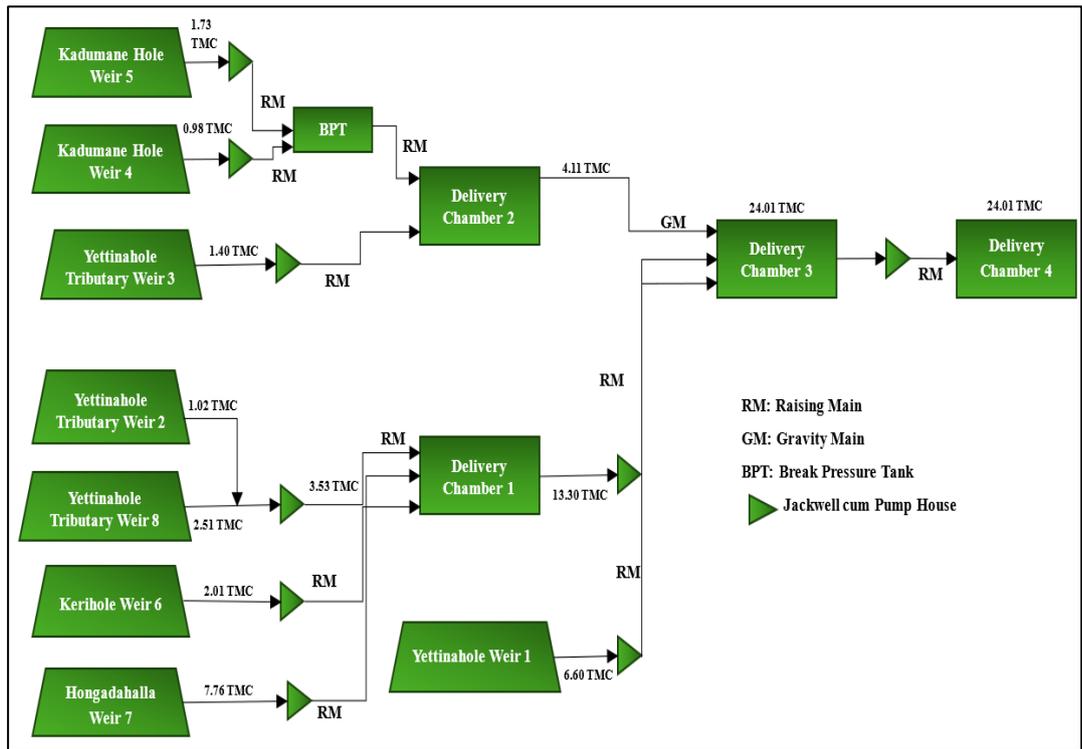
In Contract Management of the Project, Audit noticed deficiencies in tendering process such as non-adoption of standard tender document, non-assessment of bid capacity of contractors, insufficient bidding time for high value contracts *etc.* Audit also observed instances of grant of undue favours extended to Contractors such as non-recovery of excess provision of pipe materials, additional payment for works which were part of turn-key contract, untimely release of retention money/performance security, irregular advance payment for supply of pipes and non-recovery of benefits to the contractors due to implementation of Goods and Services Tax Act.

3.1 Non-synchronisation of the works under the Project

The Project was taken up under two phases. Under Phase-I, 24.01 TMC of water was to be diverted from eight west flowing streams²⁴ by constructing eight diversion weirs having suitable lifting arrangements like jackwell cum pump house and conveying the water to the identified delivery chambers through MS Raising Mains (pipeline) as indicated in the **Chart 3.1** below:

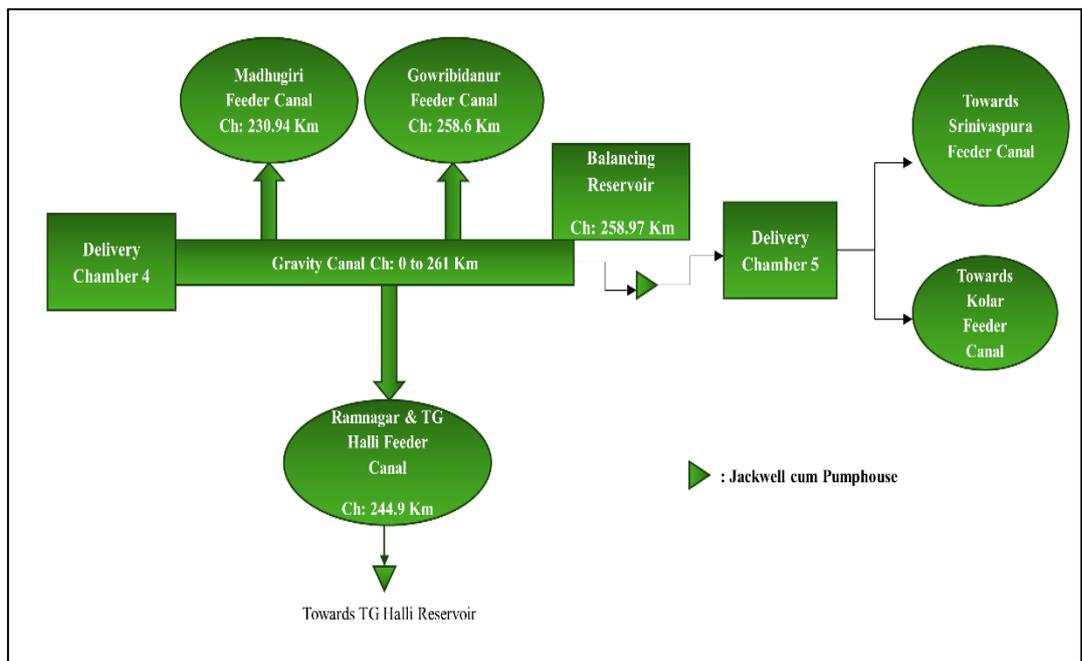
²⁴ Hongadahalla, Kadumanehole and its tributary, Kerihole, Yettinahole and its three tributaries

Chart 3.1: Components of Phase-I work



Phase-II of the Project involved works related to conveyance system for carrying water beyond Delivery Chamber 4 through Gravity Canal up to the foreshore of the Balancing Reservoir and then pumped to Delivery Chamber 5. Water was then to be delivered by Feeder Canals to Kolar and Chikkaballapura districts. The components of Phase-II work are indicated in the **Chart 3.2** below:

Chart 3.2: Components of Phase-II works



The physical progress under various components of the Project as of 31 March 2023 indicated in **Table 3.1**:

Table 3.1: Statement showing the physical progress under various components as of 31 March 2024

Phase-I works					
Components		Completed	Balance	Percentage of completion	
Weirs (No.)		8	8	100	
Jackwell-cum-pumphouse (No.)		9	9	100	
Delivery Chamber (No.)		4	4	100	
MS Raising Main (KM)		126.801	125.849	99	
Electrical Stations	KPTCL (400/220 KV) Sub-Station	2	2	100	
	Consumer Sub-Station	8	7	88	
220KV/66 KV lines (KM)*		52.66	37.22	70	
Phase-II works					
Gravity Canal (KM)		252.54	143.05	109.49	57
Balancing Reservoir at Lakkenahalli		Work awarded in March 2018 was yet to commence due to non-acquisition of land (1200 acres)			
Feeder Canals (KM)		256.81	211.55	45.26	82

* The balance electrical works at weir 3 and drawing of overhead electric lines between towers is yet to be completed.

Source: Information furnished by VJNL

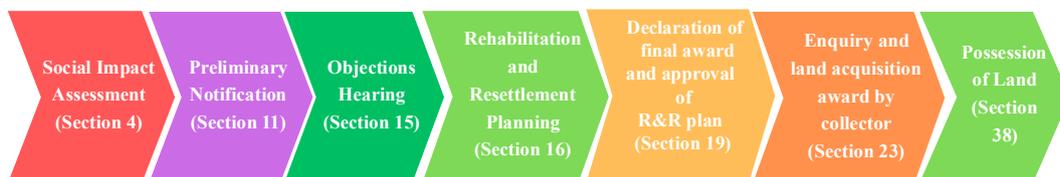
VJNL awarded the lifting components of Phase-I works during March 2014 with a scheduled period of completion of three years (March 2017). As observed in the **Table 3.1** above, under Phase-I, civil works such as construction of weirs, jackwell cum pumphouses, MS Raising Main(pipeline) *etc.*, have been completed as of March 2019. The balance works to be completed were construction of one consumer sub-station and the testing and commissioning of the lifting component/equipment. The reason for holding back the testing/commissioning was non-completion of the Gravity Canal (taken up under Phase-II of the Project) for further conveyance of lifted water to Kolar and Chikaballapura. The reasons for delay in completion of Phase-II works and the resultant impact on the Project is discussed below:

3.1.1 Delay in land acquisition

As per Section 135 of Karnataka Public Works Departmental Code 2014 (Code), calling for tenders for works for which lands are not acquired shall be avoided. In rare cases, when tenders for works are accepted but the lands required for the purpose is still to be acquired, then action should be taken on war footing to initiate acquisition proceedings. Further, the Code also stipulate that after technical sanction, acquisition proceedings should be initiated, if funds are earmarked for the work. Calling for tenders in all such cases shall be only after the entire lands are taken possession including obtaining clearances wherever necessary.

Land acquisition by Government entities is a long drawn out and complex process. The various stages involved in land acquisition as per The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as LA Act) which came into effect on 01 January 2014 are as indicated in the **Chart 3.3** below:

Chart 3.3: Process flow for land acquisition as per LA Act



As per the Section 4 of LA Act, whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation as the case may be and carry out a Social Impact Assessment (SIA) study under the notification of the Government. Further, Section 7 provides for appraisal of the SIA report by a multi-disciplinary expert group appointed by the Government. The SIA study was to be completed within a period of six months from the date of its commencement. On completion, the SIA report was to be submitted to the Government for approval and thereafter the preliminary notification under Section 11 of the LA Act would be issued by the Special Land Acquisition Office (SLAO) concerned.

The first revised project report (DPR-II) of the Project was approved by the Government in February 2014 and execution of Phase-I works commenced in five packages. The work orders for all the five packages were issued in March 2014. The land required for Phase-I works totalling to 485²⁵ acres was acquired either through direct purchase or right of use agreement with the landowners. All those works of Phase-I were stipulated to be completed by February 2017.

The requirement of land for works under Phase-II was assessed in DPR-II at 10,164 acres for Gravity and Feeder Canals (in three districts Hassan, Tumakuru and Bengaluru Rural). In view of the mandatory requirement of SIA followed by time consuming actual process of land acquisition *viz.* issue of preliminary notification, negotiation, final notification and award of land as required under LA Act, the VJNL was required to initiate the process of SIA immediately after the approval of DPR-II and commencement of works under Phase-I.

As per the approved alignment for the Gravity Main Canal under Phase-II, 100 villages in four taluks under the jurisdiction of SLAO, Hassan and 197 villages in eight taluks under SLAO, Tumakuru, were affected by the proposed acquisition of 2,763.44 acres and 3,150.75 acres, respectively.

²⁵ 449 acres through direct purchase and 36 acres through Right of Use Agreement

Audit test checked a few records relating to land acquisition process in 15 out of 100 villages in Hassan and 26 out of 197 villages in Tumakuru and observed the following:

- Though the requirement of land was determined in February 2014 (date of approval of DPR-II), the executing divisions started submission of proposals to SLAO Hassan and Tumakuru after a delay of more than one year. In test checked cases, the period of submission was between February 2015 to May 2018. The earliest proposal submitted by executing Divisions to SLAO, Hassan was on 04 February 2015 and to SLAO, Tumakuru on 06 July 2015. Audit further observed that land acquisition proposals continued to be submitted to the SLAOs till May 2018 with a delay of more than four years from the initial assessment of land required for acquisition.
- Despite receipt of requests from executing Divisions, the work orders for the SIA studies were issued by SLAO Hassan between July 2016 and October 2018, whereas in Tumakuru the SLAO issued the work orders between October 2016 to January 2017, *i.e.*, with a delay of more than a year to three years.
- Though the SIA studies were required to be completed within six months, it was observed that there was inordinate delay in submission of SIA reports. Further delay was also observed in approval from the Government to those SIA studies as detailed in **Table 3.2** below.

The overall position of SIA studies conducted and the resultant impact on the delay in issue of preliminary notification for land acquisition for Phase-II under Section 11 of the LA Act is as under:

Table 3.2: Delay in conducting SIA and issuing preliminary notification.

Special Land Acquisition Office	Date of award of SIA work	No. of SIA Reports	Date of submission of SIA Report to Government	Date of approval of SIA report by Government	Date of earliest preliminary notification
Hassan	15.07.2016 to 14.10.2018	3	29.10.2018 to 21.02.2019	21.01.2019 to 25.02.2019	28.02.2019
Tumakuru	28.10.2016 to 16.01.2017	4	17.05.2017 to 31.05.2018	31.08.2017 to 03.08.2018	07.12.2017

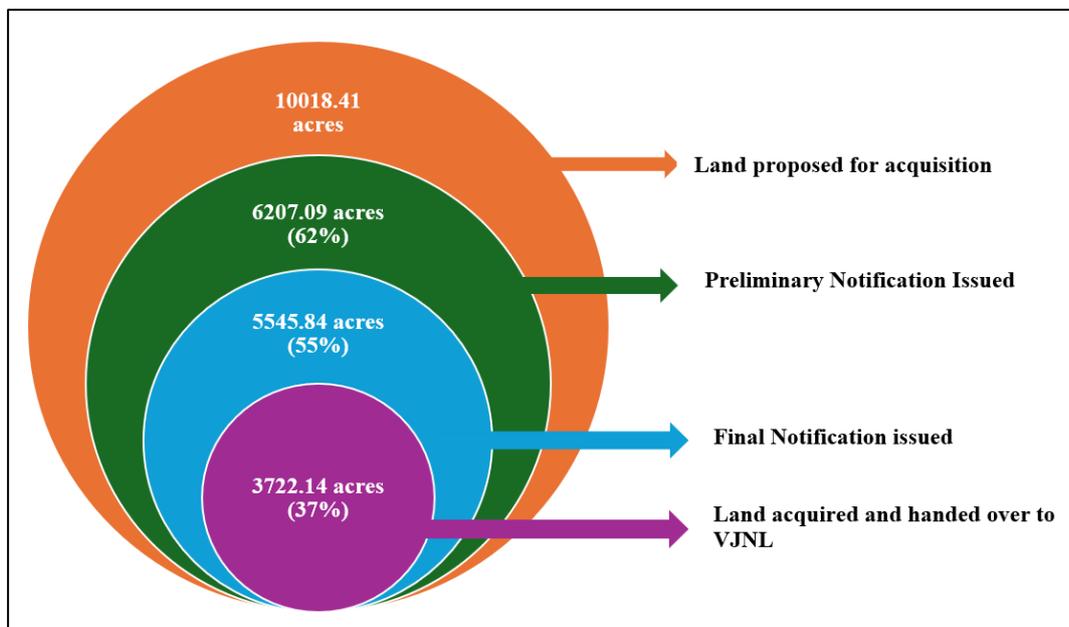
Source: Information furnished by Land Acquisition Offices

The delay of more than two years in award of SIA studies further delayed the other stages of land acquisition. The SLAO, Tumakuru and Hassan started issuing preliminary notifications in December 2017 and February 2019, respectively, for the land to be acquired for Gravity Canal works (Phase-II).

Audit thus observed that there was inordinate delay in submission of proposals to land acquiring authorities concerned and initiation of SIA works which subsequently resulted in furtherance of delay in land acquisition process.

The progress in land acquisition for Phase-II works of the Project as of March 2024 is detailed in **Chart 3.4** below:

Chart 3.4: Progress in land acquisition for Phase-II works



Source: Information furnished by Land Acquisition Offices

Out of the total proposed land for acquisition totalling 10,018.41 acres, an extent of 3,722.14 acres (37 per cent) has been acquired as of 31 March 2024. In respect of balance 6,296.27 acres, preliminary notification under Section 11 was still pending in respect of 3,811.32 acres (38 per cent). This included land required for Balancing Reservoir admeasuring 1200 acres, as VJNL could not finalise the location of Balancing Reservoir till the approval of second revised DPR (January 2023). In order to ascertain the reasons for delays at various levels, the Audit requested for the records relating to the submission of all proposals by executing Divisions and further action taken at the level of SLAOs concerned; however, the same was awaited (January 2025).

3.1.2 Idling of assets costing ₹2965.77 crore due to delay in completion of Phase-II works

The execution of Gravity Canal works under Phase-II was commenced (between December 2017 and March 2023) in 34 packages with an awarded cost of ₹8609.23 crore pending land acquisition. The earliest preliminary notification for land acquisition in respect of Phase-II works was issued by SLAO on 07 December 2017. However, tender notification for seven works were issued by VJNL in May and November 2017 itself *i.e.*, prior to issue of preliminary notification. In remaining 27

packages, the works were tendered after issue of preliminary notification but pending completion of remaining stages of land acquisition process. Audit observed that as on March 2024, there were 27 package works that remained incomplete (physical progress ranged from 4 to 92 *per cent*) for various reasons such as non-acquisition of land, farmers' protest, COVID-19 *etc.* Apart from Gravity Canal works, the work of construction of Balancing Reservoir awarded (February 2018) at the tendered cost of ₹592.35 crore could not be commenced (March 2024), for want of availability of required land. Since the completion of Gravity Canal and Balancing Reservoir was essential for conveying the lifted water to Kolar and Chikkaballapura districts, the assets which were created under Phase-I at an expenditure of ₹2965.77 crore by March 2019 were lying idle and could not be put to use till date (March 2024). The impact of non-synchronisation of works under the two phases is given in **Table 3.3** below:

Table 3.3: Impact of non-synchronisation of Phase-I and Phase-II works

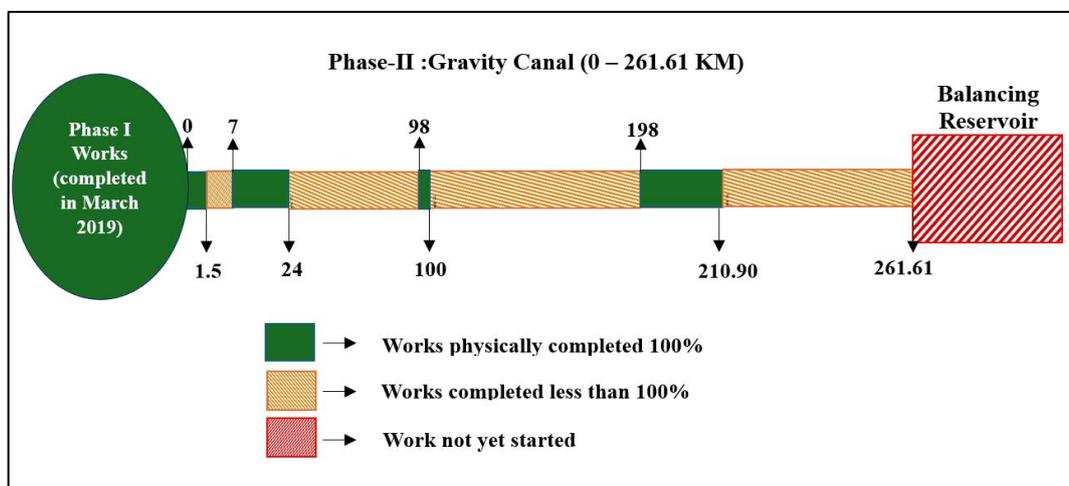
S.No	Phase works	Period of Award	Impact of the non-synchronization of works
1	<u>Phase-I works</u>	March 2014	Blocking up of ₹2965.77 crore since March 2019. The electro-mechanical equipment such as pumps/motors could not be tested and commissioned and were kept idle consuming significant portion of their useful life (Exhibit 1).
	i) Lifting Components		
	ii) Electrical Works	July 2017 and March 2018	
2	<u>Phase-II works</u>	December 2017 to March 2023	Delay of more than three years in awarding of works which were yet to be completed (December 2023)
	i) Gravity Canal 0.00 km to 261km	March 2019 to May 2023	Delay of more than five years in awarding of Feeder Canal works.
	ii) Feeder canal works	February 2018	The work is yet to be commenced (December 2023) due to non-initiation of land acquisition process
	iii) Balancing Reservoir		

Source: Information furnished by VJNL



Moreover, the execution of works under Phase-II in disjointed manner, depending on the availability of land, resulted in creation of infrastructure in patches as visualised in the **Chart 3.5** below:

Chart 3.5: Progress of Phase-II works as of March 2024



Source: Information furnished by VJNL

Government replied (March 2024) that various stages of the Project could not be synchronised due to the delays in completing various stages/ requisites mandated in the LA Act. The Phase-II works suffered from bottlenecks such as unyielding terrain, delay in completion of mandatory SIA and other land acquisition issues, delay in obtaining necessary clearances from various authorities *etc.* The works were executed at stretches where land required for the Project had been acquired to avoid cost escalation.

The reply of the Government is not acceptable, as after award of works of Phase-I in March 2014, the mandatory SIA studies for land acquisition for Phase-II works could have been taken up immediately. However, the delay in commencement as well as completion of SIA studies in turn delayed the commencement of Phase-II works by more than three and half years. Thus, the Project was executed in an *ad hoc* manner wherever land was available resulting in creation of infrastructure in patches leading to idling of assets as well as non-achievement of the objective of the Project.

3.2 Contract Management

Contract management envisages all actions taken to ensure that a project is conceived and planned carefully, resources and costs are worked out in detail, designs are made economically and accurately according to requisite standards and that the project is executed in the shortest possible time with the minimum cost and time over-runs achieving the desired standards of quality. Selection of proper contractors and contract management is the most important aspect of project implementation. Company executed 55 contract packages (Phase-I: 7 and Phase-II:

48) valued at ₹22,194.02 crore²⁶ for the project. Audit review of these works revealed following deficiencies in contract management:

3.2.1 Tendering Process

The tendering process for the Project was to be carried out strictly as per the provisions of the KTPP Act, 1999 and the rules framed thereunder to ensure that the works undertaken were executed economically and efficiently. The deviations in the tendering process from the prescribed procedures are indicated in **Table 3.4** below:

Table 3.4: Deviations from the prescribed criteria in tendering process

S No	Prescribed Criteria	Deviation observed	Impact of the deviation	Government response/Audit comment
1	GoK prescribed (October 2008) use of Standard Tender Documents (KW-1 to KW-6) discontinuing the use of prevailing tender documents (PWG-65 and PWG-66) ²⁷ to ensure consistency across all procurement entities in the State.	KNNL/VJNL awarded 44 out of 55 works (valuing ₹18,163.44 crore) under the Project during the period 2013-14 to 2022-23 (up to January-2023) by adopting PWG-65 and PWG-66.	It was observed that 44 works (out of 55) <i>i.e.</i> , 80 <i>per cent</i> of the works were awarded to the contractors without evaluation of their capacity in respect of financial capability, bid capacity, work experience <i>etc.</i> , as detailed below.	Government replied (March 2024) that since January 2023, standard tender documents were being adopted for the works taken up under the Project. Fact remains that the standard tender documents were adopted only after the award of 44 out of 55 packages of the Project
2	As per the Government Order dated 14 October 2008, contracts should be awarded only to the lowest evaluated technically and commercially responsive tenderer, who met the prescribed qualification criteria including bid capacity and past performance. The Clause for assessing the bid capacity of the Contractor was made part of the standard tender documents (KW-1 to KW-6) and the prevailing tender documents (PWG 65 and 66) were discontinued	Out of 44 works for which KNNL/VJNL failed to adopt the standard tender document, 43 works costing ₹16807.31 crore were awarded to the Contractors without assessing their bid capacity.	The non- assessment of bid capacity carries the risk of entrusting works without obtaining reasonable assurance that a particular contractor can execute and complete the work successfully at a given point of time. It was observed that out of 43 works, 29 works, constituting 67 <i>per cent</i> of the works costing ₹14,805.80 crore were awarded to only seven contractors; one contractor ²⁸ was awarded 11 contracts valuing ₹5,216.58 crore as detailed in the Appendix 1 .	Government endorsed (March 2024) the reply of the VJNL that the conditions regarding bid capacity was relaxed to encourage more participation of bidders. It was further stated that the condition was scrupulously being followed since 2021. Reply is not acceptable as KNNL/VJNL awarded major chunk of works under the Project without assessing the bid capacity in violation of the Government orders in this regard

²⁶ Phase-I: ₹4,115.07 crore (7 packages), Phase-II: ₹18,078.95 crore (48 packages)

²⁷ The standard tender documents (KW1 to KW6) were prescribed as some of the provisions of prevailing tender documents (PWG 65 and 66) were not conforming to the provisions of KTPP Act 1999.

²⁸ M/s Shankar Narayana Constructions

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S No	Prescribed Criteria	Deviation observed	Impact of the deviation	Government response/ Audit comment
3	Rule 176 (a) (ii) of KPWD Code and Rule 17 of KTPP Rules stipulates that the tender inviting authority shall ensure the minimum bidding time of 30 days for works costing up to ₹ two crore and 60 days for works costing more than ₹ two crore. This condition was amended (September 2019) and the period was reduced from 60 days to 30 days for works costing more than ₹ two crore.	KNNL/VJNL invited short term tenders for 52 out of 55 works which allowed bidding time of 9 to 33 days only on the grounds that the works were related to drinking water supply which were to be completed on priority basis. This included 14 turn-key contracts valuing ₹8,989.09 crore where the bidders had to visit the site and carry out topographical survey/soil investigation, assess the scope of the work, prepare design drawings for estimation of quantities and quote a fixed sum for the work in accordance with the design drawings and specifications.	Audit observed that 52 out of 53 works awarded on short-term tender basis were remaining incomplete as of December 2023. Thus, short term tendering has neither served the intended purpose of early completion of the Project nor ensured adequate competitiveness resulting in unfair bidding process.	Government replied (March 2024) that the short-term tenders were floated with due approval of the competent authority duly adhering to the provisions of the KTPP Act for speedy implementation of the Project in public interest. Reply is not acceptable as the very purpose of short-term tender <i>i.e.</i> , early completion of the Project, was not served and it may as well have prevented many new eligible bidders from participation, depriving fair competition.
4	As per instructions to the bidder in the tender notification “the evaluation of the technical bid will be done based on the information provided by the contractor. If the employer finds that any certificates/ information furnished is false, such bidders will be disqualified and barred from participation in the bid”. Further, the Judgment of honourable Supreme Court of India ²⁹ directed that “EMD of the contractors submitting false documents shall be forfeited and the contractors shall be blacklisted”.	VJNL neither blacklisted a Contractor ³⁰ nor forfeited his EMD of ₹3.92 crore even though he had uploaded (July 2017) a fake work done certificate while submitting his tenders for package 4. Though the contractor was not successful in securing the contracts, the tender was processed considering the agency as one of the eligible bidders. It was further observed that the said agency was allowed to bid (December 2017 and January 2018) subsequently for two other packages also.	Besides non-compliance to the directives of the Apex Court, the failure of VJNL to forfeit the EMD, was an undue financial favour extended to the Contractor causing financial loss to the Government.	Government replied (March 2024) that punitive action was not taken based on the apology submitted by the Contractor stating that the uploading of fake document was unintentional due to work pressure at the end of the financial year. Reply cannot be accepted as fake work done certificates were uploaded which amounted to fraud and appropriate action should have been taken as per the tender clause and relevant Supreme Court orders.

²⁹ Clause 2.00(xii) of judgement on civil appeal 1049 of 2019 (Vidarbha Irrigation Development Corporation Vs Anoj Kumar Garwala)

³⁰ M/s HES Infra Pvt Ltd

3.2.2 Excess payments/Undue favour to the Contractors

3.2.2.1 Inclusion of area weightage on finished items

As per item 17 of the General Notes to Schedule of Rates (2012-13) of WRD, an additional weightage for works executed under Malnad Area³¹ was allowed. On a review of estimates, Audit observed that area weightage of 12 *per cent* has been added to the basic rates of all the items of the estimates of Phase I works (Lifting components) considering the difficulty of execution in the hilly area. However, in respect of the items of works involving only supply of goods (*viz.*, supply of Metallic Volute pumps / motors) the adoption of area weightage was not justifiable.

The details of the cost of motors in the various packages is as detailed below in **Table 3.5:**

Table 3.5: Details of quantity and cost of motors in packages of Phase-I

Packages	Awarded cost of package (₹ in cr)	Cost of motors/electrical works in package (₹ in cr)	Capacity of Pumps adopted in estimate. (in HP)	12% area weightage on Cost / HP (₹)	Amount (₹ in crore)
Package 1	448.57	151.85	70800	1638.18	11.60
Package 2	685.79	140.00	110110	1638.18	18.04
Package 3	1135.03	166.71	94350	1638.18	15.46
Package 4	903.83	162.47	3680	1346.71	0.50
Package 5	543.28	78.33	18240	1639.55	2.99
Total	3716.50	699.36			48.59

Source: Information furnished by VJNL

Thus, considering area weightage over and above the basic rates for the above supply items resulted in enhancing the estimates by ₹48.59 crore. Incorrect cost estimates vitiate the tender evaluation process as tender premiums are likely to be suppressed in such cases.

Government replied (March 2024) that, the area weightage was included as per the Schedule of Rates of WRD since the works were being executed in the Malnad area. Further, it was stated that, the finished item of motor and pumps includes unloading, installing, testing and commissioning and hence, area weightage was loaded to the rates of the item.

The reply is not acceptable as the option of bifurcating the supply part and the civil/erection part under the works was not explored resulting in loading of area weightage for the composite rate of the item. It is pertinent to mention that in respect of electrical works under the Project, the estimates have been bifurcated into supply,

³¹ Areas proposed under Malnad Development Act

civil and erection portions and the area weightage has been added only for the civil and erection portion and not on the supply portion.

3.2.2.2 *Non-recovery of excess provision of length of Mild Steel Pipes*

As per Clause 18 of the General Conditions of contract, “The contractor shall be responsible for the procurement of required quantity of materials like pipes, specials, machinery, electrical items *etc.* Any materials procured for the work, if found excess, due to any reasons after the completion of the works, shall be taken back by the contractor and the employer/engineer shall not be responsible for such excess materials. The amount paid, if any, for such excess materials shall be deducted from any bills payable to the contractor”.

Audit noticed that the total length of Mild Steel (MS) Raising Main (pipeline) executed in five packages of Phase-I was 128.096 KM as against the estimated length of 140.930 KM resulting in short execution of 12.834 KM due to actual site conditions.

Accordingly, the Sakaleshpura Division recovered ₹9.32 crore (MS Raising Main (pipeline) cost ₹7.78 crore and interest of ₹1.54 crore) on account of execution of lesser length as compared to the estimated quantity in respect of package 5. However, the recovery was not carried out in other four packages resulting in excess benefit to the contractors amounting to ₹181.21 crore (as detailed in **Appendix 2**) along with interest thereon.

Government replied (March 2024) that the above works were entrusted on turn-key basis and the Contractor had to execute the increase or decrease in quantities within the contract price for successful commissioning of the Project.

Reply cannot be accepted as Clause 18 of the General Conditions of Contract provided for recovery of excess material like pipes, specials *etc.* from the future bills of the Contractor. Since VJNL had already recovered an amount of ₹9.32 crore under package 5 for excess materials, the recovery needs to be effected for other packages.

3.2.2.3 *Unjustified expenditure on works to be executed as part of turn-key contract*

Clause 13 (a) of the tender document which deals with alteration in quantity of work, specification, designs, additional work and deletion of work specified that the Contractor shall execute any additional work of any kind necessary for completion of the works as per the written orders of the Executive Engineer and such alteration shall not in any way vitiate or invalidate the contract.

Audit observed that VJNL incurred extra expenditure of ₹11.52 crore as of June 2023 (awarded cost ₹18.06 crore) in respect of two works, which were executed through separate contracts, though they formed part of the turn-key contract.

- To regulate the accumulation of excess water at the forebay and pumping station of package 2 and to divert the same towards the extreme right edge of the portion of pump house area, it was proposed to construct a RCC ground level trough for conveyance of excess flood water. This would avoid deposition of soil and debris in common pond of weir 1. This requirement cropped up due to realignment of weir 1 and pump house 1 during execution of work. The contractor did not agree to execute the above work, and VJNL took up the above work (**Exhibit 2**) departmentally at an awarded cost of ₹7.30 crore. The expenditure incurred as of June 2023 was ₹4.97 crore.
- Similarly, under package 3 the construction of chute canal from forebay point of pump house 9 to divert the excess water to Hemavathi River was essential to avoid flooding. However, the contractor did not agree for executing the chute canal work and VJNL took up the above work (**Exhibit 3**) departmentally at an awarded cost of ₹10.76 crore. The expenditure incurred as of June 2023 was ₹6.55 crore.



The requirement for the above works cropped up during execution of a turn-key project and the same were required to be executed by the Contractor being incidental to the main work. However, these works were executed departmentally and VJNL incurred additional expenditure.

While approving the estimates for the above additional works, MD VJNL, directed (June 2021 and July 2021) that the works were chargeable to package 2 and 3 works

of Phase-I and to initiate action as per tender clause of agreement against the contractor for not agreeing to execute the above work.

However, though the work were taken up departmentally, no action was taken to recover the expenditure from the Contractor.

Government accepted the audit observation and stated (March 2024) that the above works were taken up through other agencies under the risk and cost of the original Contractors. Details of recovery made from the original Contractors under the risk and cost clause was awaited (March 2024).

3.2.2.4 Incorrect application of price adjustment clause

Review of records of the divisions showed that the contract agreements included a price adjustment clause for adjusting increase or decrease in rates and prices of labour, materials, fuel and lubricants. The price adjustment was to be calculated based on the increase/decrease in wholesale price index of the above components as issued from time to time by the Ministry of Commerce and Industries, Government of India. According to Government instructions (February 2016), the months to be adopted for calculating the average price index of the first work done quarter were three consecutive calendar months including the calendar month in which work was started at the first instance.

Audit observed that the Madhugiri Division irregularly adopted current indices of the month of work order and subsequent two months for reckoning the work done quarter instead of the month in which execution of work actually started and two subsequent months. Thus, the adoption of incorrect indices for the calculation of price adjustment resulted in excess payment of ₹27.73 crore in two packages as detailed in the **Table 3.6** below:

Table 3.6: Details regarding incorrect adoption of work done months for calculation of price adjustment.

(₹ in crore)

Name of work	Months considered for first quarter adopting the month of work order	Months to be considered for first quarter as per actual execution	Price Variation paid	Price Variation payable	Excess payment
Madhugiri Gravity Feeder Canal	Sep 19, Oct 19 and Nov 19	Jan 20, Feb 20 and Mar 20	19.54	13.54	6.00
Gowribidanur Gravity Feeder Canal	Oct 19, Nov 19 and Dec 19	Dec 19, Jan 20 and Feb 20	45.46	23.73	21.73
TOTAL			65.00	37.27	27.73

Source: Measurement Books and RA Bills

Government accepted (March 2024) the audit observation and stated that the Division was asked to re-calculate the price adjustment as per the prescribed method. As per the recalculation carried out based on the latest running account bills, the Division was liable to pay ₹2.58 crore to the contractor in respect of Madhugiri Gravity Feeder Canal work. In respect of Gowribidanur Gravity Feeder Canal work, Division has to recover an amount of ₹21.73 crore from the contractor.

However, VJNL has not submitted the details of adjustments and recovery made in this regard (March 2024).

3.2.2.5 Excess expenditure due to inclusion of lining thickness in rate conversion of MS Pipes.

The estimates for manufacturing, supply and laying of MS pipes rising main included provision for inner and outer lining with concrete. However, Audit observed that while calculating the finished rate for the above pipes, the thicknesses of the inner and outer linings were added to the diameter of the pipe while converting the rate per tonne to rate per running meter. Since, the price for concrete lining (inner and outer) was already included in the rate analysis, inclusion of the thickness of concrete lining material again in the calculation was incorrect. This resulted in excess expenditure amounting to ₹21.02 crore (as detailed in **Appendix 3**).

Government replied (March 2024) that the diameter to be adopted for conversion from rate per tonne to rate per running metre was inclusive of the 15 mm thick cement mortar lining.

Reply was factually incorrect as the calculation provided in the rate analysis of the item in Schedule of Rates provided that only the clear diameter of the pipe was to be considered for rate conversion, since the item of concrete lining was already included in the rate of the finished item of work.

3.2.2.6 Irregular release of payments to Contractors

Audit observed that the Contractors under the Project were provided undue financial favours in violation of agreement conditions/Government instructions in test checked cases as detailed in **Table 3.7** below:

Table 3.7: Details of irregular release of payments to Contractors

S No	Agreement Government terms/ instructions violated	Financial Impact of the violations	Government Response/ Audit comment
1	As per Clause 40 of the Agreement, the employer shall retain a portion (five <i>per cent</i> of the civil works executed) of periodic payments made to the Contractor as retention money until completion of the whole	Under package 2 (Phase I), on the request of the Contractor (May 2019), VJNL released (November 2019) the retention money of ₹35.36 crore against a BG despite of the fact that work is yet not	Government replied (March 2024) that since 99 <i>per cent</i> of the work was completed, decision was taken to release a portion of ₹35.36 crore out of the retention amount of ₹66.41 crore as per the directions of the Technical Sub-Committee and

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S No	Agreement Government terms/ instructions violated	Financial Impact of the violations	Government Response/ Audit comment
	<p>work. On completion of the work, the Contractor may substitute retention money with a Bank Guarantee (BG) which shall be valid till end of the Operation and Maintenance period of 60 months.</p>	<p>fully completed and Operation and Maintenance has not commenced as per contract. The BG was also returned to the contractor in June 2020. This amounted to undue financial favour to the Contractor and resulted in non-availability of sufficient security for any future financial risks arising out of the non-performance/non-compliance by the contractor.</p>	<p>released the amount on obtaining the BG. Thereafter, in May 2020, based on the request from Contractor quoting GoI notification dated 19 February 2020 in respect of invoking “Force Majeure Clause” (FMC) in the Covid circumstances, VJNL considered to release the BG of ₹35.36 crore.</p> <p>The reply is not acceptable, as GoI notification <i>ibid</i> is not applicable in the instant case which provides for the termination of contract without any financial repercussions on either side in case of <i>Force Majeure</i>. Further orders issued (July 2020) in this regard by GoK provided only for the release of Performance Security³² and not the retention money deducted from the Contractor.</p>
2	<p>As per Clause 26 of the General Conditions of Contract (GCC), the Executive Engineer or other competent authority may rescind the contract by forfeiting the security deposit, if the contractor becomes insolvent or any proceedings were commenced to get himself adjudicated as insolvent. Further, the contractor shall not be entitled to recover or be paid for any work performed under the contract.</p>	<p>Out of the five packages in Phase-I, three packages (2,3 and 5) were awarded (March 2014) to a Joint Venture (JV) company wherein M/s IVRCL was either a lead partner or other partner in the JV. State Bank of India (SBI) filed a case against M/s IVRCL under Insolvency and Bankruptcy Code (IBC) 2016, before the National Company Law Tribunal (NCLT), Hyderabad to initiate Corporate Insolvency Resolution Process. Paragraph 20 of the interim order issued by NCLT declared moratorium on transferring, encumbering, alienating or disposing of by the debtor any of its assets or any legal right or beneficial interest therein.</p> <p>However, VJNL released bank guarantees held as securities relating to works of packages 2, 3 and 5 to M/s. IVRCL amounting ₹64.60</p>	<p>Government replied (March 2024) that, based on the request of the agency and in the interest of VJNL to complete the balance works, the Further Security Deposit (FSD) amount of ₹64.60 crore was released to the Contractor in view of covid relaxation. Further, the pending RA bill amount of ₹27.72 crore was released to the JV partner (M/s. MEIL), after obtaining irrevocable indemnity bond from him.</p> <p>The reply is not acceptable, as the action of VJNL to release the FSD amount to the Contractor and payment of RA Bill to one of the JV partner, despite specific request from other JV partner not to release the same was irregular and in violation of moratorium declared by the NCLT as well as contrary to the clause 26 of the GCC.</p>

³² EMD, Performance Security and Additional Performance Security

S No	Agreement Government terms/ instructions violated	Financial Impact of the violations	Government Response/ Audit comment
		crore between October 2020 to April 2021. VJNL also made (April 2023) another payment on account of R.A. Bill amount ³³ of ₹27.72 crore to M/s. MEIL ³⁴ who was the JV partner with IVRCL. This has resulted in non-compliance to Clause 26 of GCC and the moratorium declared by NCLT as well as irregular payment of ₹92.32 crore ³⁵ to the Contractor.	
3	As per clause 19.3 of additional conditions of contract, 70 per cent the payment for supplying, jointing, testing and commissioning of MS pipes can be made when the pipes are procured and transported to the work site. However, payment for third and subsequent consignments of pipes should be made only after ensuring that at least 50 per cent of the pipes supplied on previous consignments are laid, jointed and tested to the satisfaction of the Engineer. Clause 2 (e) of General Conditions of Contract (GCC) states that excess/over payments as soon as they are discovered should be adjusted in the next running account bill or from the security deposit of the contractor together with interest at six per cent.	Payments were made for supply of third and subsequent consignments of pipes without ensuring that 50 per cent of the supplies made in earlier consignments were laid and jointed. This resulted in undue financial benefit by making early payment before it became due. VJNL was therefore required to recover interest at six per cent for such payments from the contractor till the date when the condition of 50 per cent of the supplies being laid was satisfied. Audit calculated the interest recoverable from the contractors in five test checked packages at ₹48.83 crore (Appendix 4).	Government replied (March 2024) that payments were released in advance for supply of pipes at the request of the contractor citing reason that huge investments were made for supply and fabrication of pipes at the work site. It was further stated that the amounts were released in the interest of the work and in consideration of the difficult terrain and heavy rainfall in Western Ghat area. The reply is not tenable as the contract conditions were known to the contractor at the time of tendering and any relaxation during execution amounts to undue extension of favour. Further, the estimates had provision for area weightage which compensated for operation in difficult terrain.
4	Before the introduction of GST, the estimates for the works had been worked out considering Value Added Tax at four per cent (composite tax on entire contract price) and Excise Duty at 12.50 per cent. The GST rate applicable for works contract was 12 per cent which was revised to 18 per cent with effect	VJNL engaged (November 2020) Chartered Accountants (CAs) for the work of finalisation and certification of GST on work bills under the Project. The CAs calculated the GST impact and recommended for recovery of an amount of ₹77.38 crore in respect of	Government in its reply (March 2024) assured that the financial benefit to the contractors on account of implementation of GST would be recovered from the retention money/FSD of the contractors after approval of re-formulated Schedule of Rates (based on GST) by Finance Department, GoK.

³³ (Five RA bills of package 3 and 5)

³⁴ Megha Engineering and Infrastructure Limited

³⁵ ₹64.60 crore released BGs and ₹27.72 crore RA Bill paid to M/s. MEIL.

S No	Agreement Government terms/ instructions violated	Financial Impact of the violations	Government Response/ Audit comment
	10 January 2022. Therefore, the contract price was subject to adjustment on account of implementation of GST and the contractor was required to pass on to VJNL the benefit of savings, if any arising from the revision in the rates of indirect taxes leviable	only 17 works pertaining to Phase-II but did not consider five works pertaining to Phase-I, which are still in progress, and have GST transition effect.	

3.3 Deficiencies in execution of Project works in private property through Right of Use Agreement

The diversion of water from Kadumanehole required the construction of the weirs 4 and 5, pump house, electrical substation and Raising Mains (pipeline) within the property of a private company, viz Kadumane Estate Company (KEC).. The total estimated land required for the construction of above structures was estimated at 16.51 hectares.

However, KEC requested KNNL to enter into a Right of Use (RoU) Agreement as the purpose and objective of acquisition of the land could be served through such an agreement. The request of the KEC was accepted (March 2015) by KNNL as land acquisition has a long lead time which may cause delay in completion of the Project. Accordingly, a tripartite agreement, with KEC, KNNL and the contract agency (Joint Venture of IVRCL and MEIL) was entered (February 2016) granting the right to use of the said land. In consideration for the Right of Use, VJNL paid ₹50.00 lakh as one time License Fee. The time period specified for completion of works as per the agreement was 30 months (till August 2018). Since VJNL could not complete the works within the validity period, the agreement was renewed four times. The latest extension was up to 31 January 2024. Audit observed the following deficiencies in the execution of works through Right of Use agreement:

- As per the RoU agreement, VJNL had to complete the works by August 2018 for a licence fee of ₹ 50 lakh. Since the works were not completed, KEC demanded (March 2019) additional payment of ₹1.50 crore as license fee for renewing the agreement. The BoD of VJNL agreed (December 2019) for additional payment of ₹30 lakh for extending the period of Right to Use agreement. However, KEC insisted (March 2020) for additional payment of license fee of ₹1.50 crore which KEC subsequently enhanced (February 2023) to ₹2.50 crore.
- Clause 17 provided for registration of the RoU agreement in the jurisdictional sub-registrar office so that the right to use of KEC property by VJNL gets reflected in the RTC (Record of Rights, Tenancy and Crops)

documents. However, the registration was yet to be carried out as KEC insisted for payment of the compensation of ₹2.50 crore as pre-condition for the registration of the agreement. Thus, VJNL did not have legal rights to access the Project area unless the agreement was periodically renewed under the consent of KEC.

- KEC imposed restrictive conditions in the main agreement by prohibiting GoI/GoK/VJNL from initiating any action for acquisition of the identified land in whole or part either during the term of this agreement or thereafter. The above conditions were voidable in nature, as the Government can acquire any land for public purpose as per the Section 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Thus, imposing voidable conditions in the agreement would amount to violation of the Section 2 of the *ibid* Act.

Thus, due to delay in completion of the Project works within the original agreed period of 30 months, VJNL may be required to pay an additional license fee of ₹2.50 crore. Further, VJNL has not registered the agreement as per the provisions of Karnataka Stamps Act which would have given permanent legal rights to access the project site located in the KEC premises.

Government replied (March 2024) that adopting the RoU agreement for utilisation of land was beneficial compared to the cost and time involved for land acquisition. It was further stated that action would be taken to register the agreement as per the provisions of Karnataka Stamps Act as and when payment of ₹2.50 crore was made to KEC under the approval of competent authority.

However, the fact remains that the delay in completion of works resulted in additional liability of ₹2.50 crore to VJNL, besides non-registration of the RoU agreement.

Audit Recommendations

Recommendation 5: VJNL should complete the Phase-II works within the timeline fixed by VJNL Board to avoid the idling of assets already created and ensure the supply of drinking water to the targeted beneficiaries.

Recommendation 6: VJNL should follow the provisions of Karnataka Transparency in Public Procurements Act and recover excess payments in a time bound manner.