

CHAPTER–III
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Acquired Land

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The chapter discusses infrastructure development activities carried out by UPSIDA in the acquired land to make it suitable for industrial and other uses. Key issues highlighted include not achieving the land development targets, not assessing the capacity of bidders to undertake the work, not safeguarding UPSIDA's interest by not adopting appropriate liquidated damages provisions of UPPWD as applicable and not recovering interest on unutilised funds from contractor for depositing it with the exchequer.

Introduction

3.1 The Industrial Investment and Employment Promotion Policy 2017 envisaged creation of quality infrastructure for the industries. Availability of an enabling and resilient infrastructure is one of the crucial backbones of industrial growth. It not only reduces operation costs of businesses but also rebalances the economy and leads to higher growth and living standards. For this purpose, after the acquisition of land, UPSIDA (including erstwhile UPSIDC) develops it by constructing roads, electric supply facilities, water supply and sewerage facilities *etc.* in the industrial area. Further, it also undertakes maintenance and up-gradation work of existing IAs. The development/maintenance works are carried out by Construction Divisions (CDs). CDs execute infrastructure development work of IAs through invitation of tenders from contractors as per the provisions of the Working Manual for Development and Maintenance of Industrial Areas (WMDMIA). In case of activities/norms not incorporated in WMDMIA, the same was to be followed as per UPPWD/Central Public Works Department (CPWD)/Ministry of Road and Transport Highways of India (MoRTH) norms¹. As on 31 March 2024, there were 15 Construction Divisions (including 4 electrical divisions) under UPSIDA.

Audit Findings

3.2 In five sample CDs², 113 contract bonds valuing ₹ 640.70 crore (out of total 440 contract bonds valuing ₹ 1,995.60 crore) were selected for detailed examination. Records of 11 contracts³ out of 113 selected contract bonds were not made available to audit. Audit findings relating to infrastructure development are discussed in succeeding paragraphs:

Land Development targets not achieved

3.2.1 The status of development of land (Target and Achievement) for the period 2017-18 to 2022-2023 is given in **Table 3.1**.

Table 3.1: Target and achievement for development of land

Sl. No.	Year	Target (in acres)	Achievement (in acres)	Shortfall (in acres)	Shortfall (in per cent)
(1)	(2)	(3)	(4)	(5 = 3-4)	(6)
1	2017-18	1,138	335.49	802.51	70.52
2	2018-19	1,535	112.00	1,423.00	92.70
3	2019-20	1,380	273.50	1,106.50	80.18

¹ As per preface of the WMDMIA.

² CD-7 Lucknow, CD-8 Kanpur, CD-9 Prayagraj, CD-TGC Unnao and ED-01 Kanpur.

³ GoUP stated (July 2024) that due to frequent transfer of charge at the then Chief Engineer end, certain files and papers could not be ensured.

Sl. No.	Year	Target (in acres)	Achievement (in acres)	Shortfall (in acres)	Shortfall (in per cent)
(1)	(2)	(3)	(4)	(5 = 3-4)	(6)
4	2020-21	1,500	1,130.00	370.00	24.67
5	2021-22	1,750	734.00	1,016.00	58.06
6	2022-23	750	378.26	371.74	49.56

Source: Annual budget approved by Board

It can be seen from **Table 3.1** that UPSIDA could not achieve the target for development of land in any year out of the six years from 2017-18 to 2022-23. The shortfall in achievement of targets ranged between 24.67 *per cent* to 92.70 *per cent*. The continuous failure to achieve the targets indicates that adequate efforts were not made by UPSIDA for development of land.

It is pertinent to mention that, UPSIDC Board in its 299th meeting (April 2018) expressed concerns regarding land parcels vacant for about 10 years without being utilized for industrialization purposes and directed the Management to study the reasons for the same and present along with gap analysis indicating the requirement of infrastructure facilities in the subsequent Board meeting. Management did not present such an analysis to the Board.

During Exit Conference (April 2024), UPSIDA intimated that target of land development could not be achieved due to covid-19 and fixation of ambitious targets. GoUP stated (July 2024) that partial achievement was due to villager's unrest, land possession not delivered by district administrations, acute shortage of land acquisition and engineering staff and covid impact from 2020 onwards.

GoUP/UPSIDA did not comment regarding not apprising the Board about the requirement of infrastructure facility in the IAs despite the direction of the UPSIDC Board in its 299th meeting.

Irregularities in evaluation of bidding documents

3.2.2 As per Para 20.8.6 of WMDMIA⁴, tender papers shall be examined thoroughly prior to putting up to the tender committee for approval.

Audit noticed that for the development for IAs, UPSIDC awarded 13 contracts⁵ valuing ₹ 143.22 crore of two selected construction divisions⁶ to M/s Balaji Builders between September 2015 to July 2016 without verification of their experience certificates. Later, these certificates were suspected (June 2017) fake resulting in cancellation (July 2017) of awarded contracts.

Similarly, UPSIDC awarded (January 2017) two contracts⁷ valuing ₹ 112.53 crore of two selected construction divisions⁸ to M/s Akash Engineers & Builders without verification of their experience certificates and Fixed Deposit Receipt (FDR). Later, these certificates were suspected (December 2017) fake resulting in cancellation (January 2018) of awarded contracts.

During Exit Conference (April 2024), UPSIDA accepted the audit observation and stated that FIRs have been registered against M/s Balaji Builders. GoUP stated (July 2024) that contracts of M/s Balaji Builders were rescinded,

⁴ The tender papers shall be examined thoroughly in respect of the directives laid down herein prior to their putting up to the tender committee.

⁵ Includes two sample contract bonds valuing ₹ 22.79 crore.

⁶ CD Trans Ganga city, Unnao and CD-9 Prayagraj.

⁷ Includes one sample contract bonds valuing ₹ 63.41 crore.

⁸ CD Trans Ganga city, Unnao and CD-9 Prayagraj.

security money forfeited, FIRs were filed and recovery proceedings have been initiated. Recovery of ₹ 139.28 lakh out of ₹ 1,265.46 lakh was made and the recovery of remaining amount was in progress. Both the contracts of M/s Akash Engineers & Builders have been rescinded.

Management did not provide documents supporting action taken against responsible officials to Audit as requested in the Exit Conference.

Recommendation No. 3

UPSIDA should ensure proper verification of bid documents to avoid awarding contracts on the basis of suspected fake documents. Furthermore, action should be taken against officials responsible for the same.

Bidding capacity not assessed

3.2.3 Para 4.6 of Model Bidding Document (MBD) 2007 of UPPWD provides that for works costing above ₹ 40 lakhs, bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity⁹ for construction work is equal to or more than the total bid value.

Audit noticed that 27 contract bonds with value ranging from ₹ 1.01 crore to ₹ 63.41 crore were awarded to contractors without assessing their bid capacity. Out of these 27 works¹⁰, 11 works were completed with delays ranging from 61 to 2,612 days and 14 works that were not completed till March 2024 had delays ranging from 648 to 2,678 days as detailed in **Appendix-3.1**.

UPSIDC in its 298th Board meeting (January 2018) acknowledged that work could not be executed properly due to award of high value works to contractors with lower capacity.

In its reply, UPSIDA stated (October 2023) that it did not adopt the provision of MBD 2007 of UPPWD and works were awarded on the basis of examination of pre-qualification as provided in WMDMIA.

During the Exit Conference (April 2024), UPSIDA stated that it had started the practice of assessing the bidding capacity in case of high value contracts and the bidding capacity of contractors in two works executed through Engineering, Procurement and Construction (EPC) mode has been assessed. However, there was no provision in WMDMIA for assessing the bidding capacity of bidders.

GoUP stated (July 2024) that UPSIDA was encountering challenges in securing bids for small scale works and imposing stringent bidding capacity parameters may exacerbate these challenges. However, for big quantum of works (like EPC), UPSIDA had started the practice of assessing the bidding capacity. For small works appropriate action would be taken in future.

⁹ Assessed Available Bid capacity = (A x N x M - B) where A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the last year at the rate of 8 per cent a year) taking into account the completed as well as works in progress. N = Number of years prescribed for completion of the works for which bids are invited (period up to 6 months to be taken as half-year and more than six months as one year). M = M is taken 2.5, B = Value, at the current price level, of existing commitments and on-going works to be completed during the period of completion of the works for which bids are invited.

¹⁰ Two works were cancelled.

The reply is not acceptable as the criteria for pre-qualification provided in WMDMIA assess the bidder's experience in executing similar nature of work and not the available bid capacity. Further, WMDMIA provides that in case of activities/norms not incorporated in it, the same was to be followed as per UPPWD/CPWD/MoRTH norms¹¹.

Recommendation No. 4

UPSIDA should ensure assessment of the bidding capacity of the bidders to avoid awarding contracts to bidders not capable of efficiently executing the work.

Appropriate liquidated damages provisions not adopted

3.2.4 General Conditions of Contract (GCC) of Model Bidding Document (MBD) 2007 of UPPWD for works costing above ₹ 40 lakhs, specified liquidated Damages (LD) for delay in completion of work at the rate of one *per cent* of the initial contract price per week with maximum LD of 10 *per cent*. There was no LD provision in WMDMIA. In such case, UPPWD provisions were applicable to UPSIDC/UPSIDA.

Audit noticed that UPSIDA (including erstwhile UPSIDC) introduced lenient¹² LD clause compared to UPPWD provisions in the contract bonds executed with the contractors. Due to this, it could withhold a maximum of only one *per cent* of the contract bond value instead of 10 *per cent*. In 16 cases as detailed in **Appendix-3.2** and having delays ranging from 486 days to 2,678 days, UPSIDA deducted ₹ 1.31 crore from the bills of contractors instead ₹ 15.02 crore¹³ resulting in short deduction of ₹ 13.71 crore on account of delay penalty.

In its reply, UPSIDA stated (October 2023) that time delay penalty had been increased from one *per cent* to 10 *per cent* as suggested by Audit. GoUP stated (July 2024) that delay penalty had been increased from 1 *per cent* to 10 *per cent* as per the norms prescribed by UPPWD for all new work *w.e.f.* 19 July 2023. For old works, it was not possible to do anything, but in future it would be taken care of.

The fact remains that a reasonable LD penalty provision safeguarding the interests of UPSIDA was not incorporated in the contract bonds leading to short deduction on account of delay penalty.

Quality inspection fee not recovered from contractors

3.2.5 As per General Conditions of the contracts executed between UPSIDA (including erstwhile UPSIDC) and contractors, expenses for quality testing would be borne by the contractors.

Audit noticed that in case of 34 works as detailed in **Appendix-3.3**, UPSIDA did not recover the cost of quality tests amounting to ₹ 1.63 crore from the bills of the contractors in violation of the General Conditions of the contracts executed between UPSIDA/UPSIDC and contractors, thereby extending undue benefit to the contractors.

During Exit Conference (April 2024), UPSIDA stated that office order had been issued for recovery of quality testing fee from the final bill of the

¹¹ Preface of the WMDMIA.

¹² Maximum rate of LD 1 *per cent* of the contract value instead of 10 *per cent*.

¹³ Determined at the rate of 10 *per cent* on the value of work done.

contractors. GoUP re-iterated (July 2024) Management's reply given during Exit Conference.

Recommendation No. 5

UPSIDA should ensure retention of delay LD at appropriate rates from the bills of the contractor to safeguard its interests. Further, UPSIDA should recover quality inspection fee from the contractor as per agreed terms and conditions.

Interest on unutilised funds not recovered

3.2.6 GoUP released (March 2016) ₹ 25 crore to UPSIDC for construction of Perfume Park in Kannauj. UPSIDC decided (December 2016) to execute construction of Perfume Park & Museum¹⁴ as deposit work through Uttar Pradesh Rajkiya Nirman Nigam Ltd (UPRNN) and released ₹ 26 crore to UPRNN, though GoUP had released only ₹ 25 crore. The work was to be executed according to concept plan developed by consultant appointed by UPSIDC. However, UPSIDC Board resolved (January 2018) to develop the perfume park and museum in 50 acre land instead of 30 acre land in first phase. Accordingly, pending acquisition of additional land, UPSIDC requested (January 2018) UPRNN to refund amount of ₹ 26 crore released to it. UPRNN refunded (July 2018) ₹ 25.75 crore to UPSIDC after deducting ₹ 24.75 lakh for expenditure already incurred.

Audit noticed that in violation of the GoUP direction¹⁵, UPSIDC did not recover the interest amounting to ₹ 1.48 crore earned by UPRNN on ₹ 25.75 crore lying un-utilised with it during the period from January 2017 to June 2018.

During Exit Conference (April 2024) UPSIDA accepted the audit observation and stated that efforts were made to recover the interest amount from UPRNN. GoUP stated (July 2024) that letters were issued to UPRNN to release the interest amount.

Avoidable expenditure on maintenance of area falling under Municipal Bodies

3.2.7 GoUP transferred (December 2001) 35 notified Industrial Areas of UPSIDA (including UPSIDC) to respective municipal bodies for maintenance. UPSIDA (including UPSIDC) discontinued (April 2009) maintenance of these 35 IAs from its own funds and the levy of maintenance charges from the allottees.

UPSIDA (including UPSIDC) in Clause 8.02 of its Operating Manual (Industrial Area) 2011, also incorporated the provision of not taking up the maintenance/infrastructure work in the areas falling in territorial jurisdiction of municipal bodies and not levying maintenance charges in those areas.

Audit noticed that UPSIDA incurred an avoidable expenditure of ₹ 7.67 crore from its own funds on maintenance work in case of 16 IAs out of above 35 IAs during the year 2019-20, in violation of its Operation Manual and orders. It did not recover these charges from the allottees.

¹⁴ Name changed (29 January 2018) from Perfume Park & Museum to "Itr Park and Sanghralaya".

¹⁵ The GoUP order (29 May 2015) *inter-alia* stipulates that interest earned through bank deposit on allotted funds shall be credited to the Government.

The above matter was also commented in the CAG's Audit Report (Economic Sector-Non PSUs) for the year ended 31 March 2015 in respect of expenditure incurred during 2012-13 to 2014-15.

During Exit Conference (15 April 2024), UPSIDA intimated that due to municipal bodies not taking up maintenance work in some of these transferred IAs, it had to carry out maintenance work and incur expenditure. The GoUP acknowledged UPSIDA's reply.

The reply is not acceptable because, as per the GoUP order and the Board's decision, UPSIDA was not required to carry out maintenance work from its own fund, in IAs under the jurisdiction of municipal bodies.

Conclusion

UPSIDA did not achieve its own targets for land development, indicating that adequate efforts were not made to achieve them. UPSIDA was yet to take action on officials responsible for the award of contracts to bidders based on their fake documents. Significant delays in execution of work and incomplete works were noticed in cases where the contracts were awarded to bidders without assessing their bidding capacity. UPSIDA under recovered delay penalty amounting to ₹ 13.71 crore from contractors' bills due to inadequate LD provisions. Interest amounting to ₹ 1.48 crore was not recovered from UPRNN. The quality inspection fee amounting to ₹ 1.63 crore was not recovered from the bills of the contractors. Avoidable maintenance expenditure of ₹ 7.67 crore was incurred by UPSIDA in maintenance of area falling under jurisdiction of municipal bodies.