

COMPLIANCE AUDIT

CHAPTER - V

COMPLIANCE AUDIT – OTHER TOPICS

AGRICULTURE DEPARTMENT

5.1 Lack of proper field study

Watershed to treat an area of 228 Ha at project cost of ₹0.46 crore was stopped as the legal status of the land in possession of private people was a forest.

Government of Kerala (GOK) accorded (November 2009) Administrative Sanction (AS) for Panchalithodu watershed to treat an area of 228 hectares at a project cost of ₹0.46 crore. The project report was prepared by District Soil Conservation Officer (DSCO) without sufficient base work/surveys and also without proper discussion with local authorities. The work was stopped (March 2011) due to the failure of Director of Soil Survey and Soil Conservation (DSSSC) to ascertain the legal status of the area before starting the work.

By that time the Directorate had achieved 15 *per cent* progress (₹0.06 crore financial progress) and requested¹ Government for dropping of project since conservation work was not possible in the Reserved forest area where Agriculture Department (AD) did not have jurisdiction. Due to the non implementation of project, financial assistance to tune of ₹0.40 crore earmarked for the project could not be availed of.

During Exit Conference, the Secretary admitted the Audit point and stated that in future, certification would be obtained from DSCO to the effect that the lands selected were free from all encumbrances before forwarding project proposals to Government.

5.2 Failure to re-arrange the work

Failure to recover risk and cost from the contractor and to re-award the work resulted in non-completion of soil conservation works to benefit 940 Ha of land and consequent loss of assistance of ₹1.37 crore from NABARD.

With a view to mitigate the flood thereby reducing the scarcity of water and to convert 400 Ha paddy field to double crop land, AD accorded administrative sanction (March 2007) to implement Drainage and Flood Protection works in Vayinthodu, Malachal in Thrissur District with NABARD assistance of ₹1.77 crore under RIDF XI. The project envisaged construction of regulator, restructuring of *thodu*, construction of sluice, retaining wall etc. so as to benefit 940 Ha of land. The DSCO awarded (March 2007) the work to M/s Eranad Construction Company Private Limited for ₹1.73 crore stipulating the period of completion as two years. The contractor stopped the work (June 2008) after incurring ₹0.36 crore and achieving 20 *per cent* financial progress and expressed unwillingness to continue the work as the water level in the

¹ July 2014, September 2014, November 2014 and March 2015.

canal was more than one metre deep and soil below water level was clayey and loose. The work was terminated (July 2010) by DSCO at the risk and cost of the contractor.

Audit further noticed that the Directorate forwarded (October 2014) a detailed estimate based on Delhi Schedule of Rates (DSR) 2014 for the work amounting to ₹6.50 crore to AD for inclusion under RIDF XX. The proposal was rejected (June 2015) by AD as it had already been sanctioned under RIDF XI. The Directorate was not able to re-arrange the work till date (November 2015).

During Exit Conference, the Secretary accepted the Audit observation and stated that necessary disciplinary action had been initiated against the officer responsible for the lapse and the Earnest Money Deposit of the contractor was forfeited.

5.3 Non-completion of Centrally Sponsored Schemes (CSS) leading to fragmented execution of schemes

Failure of the DSSSC in submitting project proposals as per the RKVY guidelines in respect of 134 watersheds resulted in expenditure of ₹27.97 crore becoming unfruitful.

In order to make specific interventions for development of agriculture, projects were taken up in the State through various CSS. Macro Management of Agriculture (MMA) was one of such scheme which included two sub programmes viz. National Watershed Development Project for Rainfed Area (NWDPR) and RVP implemented through Soil Conservation wing. The scheme provided flexibility for the State to develop and pursue the programmes and the benefits in terms of area, production level etc. are determined in an interactive mode with Ministry of Agriculture. The MMA became inoperative since April 2013 and thereafter the activities covered under MMA could be taken up under any other CSS/RKVY as per the extant guidelines.

i) Unfruitful expenditure on NWDPR leading to non-achievement of objectives

GoI accorded sanction for 31 sub-watersheds (134 micro watersheds) for treatment of 84,415 Ha of land under NWDPR at an estimated cost of ₹101.29 crore (90 per cent CSS) during XIth Plan period (2007-12). It was observed that an amount of ₹23.26 crore which was received was incurred upto March 2012 and a sum of ₹4.71 crore was incurred additionally out of Rashtriya Krishi Vikas Yojana (RKVY) scheme fund during 2012-13. The Directorate was able to carry out conservation activities in 30,797 Ha of land only with the available resources leaving the balance area of 53,618 Ha without undertaking conservation activities due to paucity of funds.

Audit further noticed that the Directorate submitted proposals to Project Preparation and Monitoring (PPM) Cell for sanction to undertake 134 balance work of watersheds for treating 8,333 Ha under NWDPR at an estimated cost at ₹10 crore during 2013-14. The proposals were rejected by the PPM Cell as these did not strictly comply with guidelines of RKVY. The

Directorate had not forwarded any proposals to the GOK for the period 2014-15 and 2015-16 to take up the balance works.

Thus, the failure of the Directorate in submitting project proposals as per RKVY guidelines in respect of 134 watersheds had resulted in non-achievement of the intended benefits such as ground water recharge, increase in number of wells and water bodies, enhancement of cropping intensity, changes in cropping pattern, higher yields in soil loss etc. Thus, the expenditure of ₹27.97 crore incurred on these watersheds could not become fruitful due to non-completion of project works.

During Exit Conference, the Secretary admitted the Audit observation and stated that the balance work would be taken up under new scheme after discussion in the next State Level Sanctioning Committee (SLSC) meeting.

5.4 Irregular drawal of amount from treasury and payments to contractor

PSU not directly executing works have been paid mobilisation advance of ₹0.81 crore in violation of instructions. Further, DSSSC had withdrawn ₹1.13 crore from the treasury in March 2015 before incurring the actual expenditure and held it till December 2015 as against the codal provisions.

As per GOK order dated July 2014, PSUs not directly executing works are not eligible for mobilisation advance. Further, as per guidelines, mobilisation advance can be paid to the agencies only after obtaining prior approval of Government in eligible cases.

- The work of ‘Strengthening and providing additional infrastructure facilities to the State Level Centre’ – Institute for Watershed Development and Management Kerala at Chadayamangalam (IWDMK) was awarded (December 2014) to M/s Kerala Land Development Corporation (KLDC) at an estimate cost of ₹0.81 crore. Though it was specifically mentioned in MoU with KLDC that the agency was executing the work through sub-contractor, the DSSSC paid (June 2015) the contract amount of ₹0.81 crore as mobilisation advance to the KLDC violating conditions in guidelines.
- DSSSC had withdrawn ₹1.13 crore from treasury in March 2015 before incurring the actual expenditure and held it till December 2015, against codal provisions.

During Exit Conference, the Secretary admitted the observation and stated that the matters would be pursued by the Department.

PUBLIC WORKS DEPARTMENT

5.5 Inadmissible payment to contractor on balance items of bridge work

Irregular revision of rate of items mentioned in the agreement schedule by treating them as extra items and non-availing of agreed tender rebate while making payments thereon to the contractor resulted in undue benefit of ₹1.09 crore to the contractor.

As per clause 23 (e) of Notice Inviting Tenders (NIT), extra items of work are those which are not expressly or impliedly described in the schedule, plans or specification. Those items of work which though highly necessary for the proper execution of the work and its completion, if not provided for in the original contract, can be treated as 'extras'.

Further, as per Clause 3 (b) of NIT, the overall percentage rate accepted and specified in the agreement shall not be varied on any account whatsoever.

The Superintending Engineer, PWD, Roads and Bridges, North Circle, Kozhikode (SE) had awarded² (April 2009) the work "construction of bridge at Varamkadavu in Chelora Grama Panchayat in Kannur district (balance work)" to a contractor³ at 21.80 per cent below estimated amount of ₹2.64 crore.

The items of work included in the original agreement schedule for formation of approach roads to the bridge structure which was completed in March 2005 consisted of earthwork for forming high embankment for approach roads, and ground improvement works using non-woven geo-textiles, woven geo-textiles and Pre-fabricated Vertical Drain (PVD).

During execution of the work, these items were treated as extra items and their rates enhanced, by executing (November 2009/March 2010) Supplementary agreements by the SE with the contractor. The contractor had agreed to execute these extra items at 21.80 per cent below estimate rate. The work was completed in May 2011. The contractor was paid an amount of ₹3.81 crore in five part bills as of December 2015.

Audit scrutiny revealed that:

- The above items of work were expressly mentioned in the Agreement executed by the contractor for the balance work. So, as per clause 23 (e) of NIT, they could not be treated as extra items. However, in violation of this provision, SE had treated them as extra items and revised (November 2009/March 2010) their rates.
- The Executive Engineer, PWD Roads Division, Kannur, (EE) did not apply tender rebate from the payments made to the contractor on the extra items, even though it was agreed in the supplementary agreements executed. This was in violation of the rules on application of overall tender percentage contained in the NIT.

The above violations resulted in inadmissible payment of ₹1.09 crore to the contractor, which amounted to undue benefit extended to him, as shown in the table below:

² SE (K) 5/2009-2010 dated 17 April 2009

³ Sri TA Abdulrahiman, Kasaragod

Description of item in Agreement	Up to date quantity executed	Agreed rate after applying tender rebate	Revised rate used for payment without tender rebate	Undue benefit to the contractor (in ₹)
(1)	(2)	(3)	(4)	[2 x (4-3)]
Earth work filling with all classes of soil suitable for forming high embankment...	54174.38 m ³	₹1516/10 m ³ (1939, less 21.80 %)	2,424/10 m ³	49,19,033.70
Providing and laying non-woven geo-textile fabric...	6332.08 m ²	₹55.91/m ² (71.5, less 21.80%)	88/m ²	2,03,196.45
Providing and laying woven geo-textile fabric...	4380.78 m ²	₹59.82/m ² (76.5, less 21.80%)	89.78/m ²	1,31,248.17
Providing and laying non-woven geo-textile fabric under water...	800 m ²	₹55.91/m ² (71.5, less 21.80%)	88/m ²	25,672.00
Providing and installing flexible pre-fabricated vertical drain...	130392.10 m	₹66.47/m (85, less 21.80%)	109.92/m	56,65,536.75
Total undue benefit to the contractor				1,09,44,687.07

When the matter was pointed out (June 2013), Government replied (October 2014) as under-

- revision of rates in earthwork was in lieu of wastage of earth during execution. Further, the estimate rate for earth work was adopted without applying tender rebate, as it was an extra item, and;
- the ground improvement materials viz., geo-textiles and PVD, were brought from abroad and that an approximate rate taken from earlier executed work was adopted in the estimate. But, when order was placed for these materials at the time of execution, their rates had increased. Further, these were not items included in the Schedule of Rates, but were market rate components for which tender variation was not applied.

The reply of Government was not tenable due to the following reasons:-

- Earthwork for formation of approach roads was an item expressly provided in the original agreement schedule. Hence, revision of its rate by treating it as an extra item was a violation of the condition of NIT. Moreover, the contractor had clearly agreed in the supplementary agreement that the tender rebate of 21.80 *per cent* was applicable for this extra item.
- Similarly, the items for ground improvement work were also expressly provided for in the schedule of the balance work. So, the contractor had quoted his rates accordingly with tender rebate. Hence, classifying them as extra items of work and enhancing their rates was a clear violation of the NIT provision.
- Further, as per NIT, it was the duty of the contractor to ensure availability of materials before quoting his rates. Hence, the contractor was not eligible for rate revision on account of non-availability of materials and variation in market rates. In this case also, the department failed to avail the benefit of tender rebate agreed by the contractor.

Thus, the action of the Department in enhancing the rates of items expressly mentioned in the agreement schedule by treating them as extra items in violation of the NIT provisions and non-availing of agreed tender rebate on

those items resulted in extending an undue benefit of ₹1.09 crore to the contractor.

5.6 Disallowance of re-imburement claim by MoRTH

Execution of original works without prior approval of MoRTH by treating them as ordinary repair works resulted in rejection of reimbursement claim of ₹68.10 crore besides foregoing agency charges of ₹6.13 crore.

The Ministry of Road Transport and Highways (MoRTH) is primarily responsible for development and maintenance of National Highways (NHs). The activities are monitored by the Regional Office of MoRTH in each State. The actual work of construction of NH is entrusted to State Government on agency basis under the provisions of Article 258 of the Constitution of India for which nine *per cent* agency charges are claimed by State Government from MoRTH. The role of State Government is confined mainly to maintain, upgrade and improve the riding quality of existing NHs and carry out ordinary annual repairs.

Up to 31 March 2003, the State Government was to initially incur expenditure on construction and maintenance of NHs and then get it reimbursed from MoRTH. With effect from 1 April 2003, the system was changed to Direct Payment Procedure (DPP) by MoRTH for all NH works under the major head 5054 and Special repair and periodical renewal / Improvement of Riding Quality works under major head 3054. The transactions under DPP, therefore, do not involve the State Government budgetary system. For Ordinary Repairs (ORs) and Flood Damage Repairs (FDRs), the previous system was continuing. As such, the NH works undertaken as ORs and FDRs do not require prior sanction by MoRTH before execution.

Scrutiny of records (between December 2011 and October 2015) in five offices⁴ of NH wing of Public Works Department (PWD) revealed that 17 works (**Appendix 5.1**) were executed during the period 2011-12 and 2014-15 treating them as ORs, based on the sanctions of State Government only and claimed reimbursement from MoRTH (between January 2012 and June 2014) projecting them as ORs. The MoRTH disallowed (between March 2012 and September 2014) the claim for reimbursement stating that the works executed were not ORs but Original Works requiring prior sanction of MoRTH before execution. The claims thus disallowed amounted to ₹68.10 crore which the State Government had to bear from its own budgetary resources. Besides, the State also could not claim agency charges amounting to ₹6.13 crore.

Thus, the department failed to adhere to the guidelines of MoRTH while making claim for reimbursement of expenditure incurred on the maintenance of NHs and consequently burdening the State exchequer to the extent of ₹74.23 crore.

Government replied that the department had arranged the works due to poor condition of NHs in the State and inadequacy of funds / sanction from Government of India. It was also stated that the works undertaken were ORs

⁴ NH Division Kannur, Kodungallur, Kozhikode, Moovattupuzha and NH North Circle Kozhikode.

not requiring prior sanction from MoRTH. The reply is not tenable as the works executed were not Ordinary Repair works but were Original Works as remarked by MoRTH while scrutinising the claim for reimbursement. Further, these Original Works required prior sanction from MoRTH.

5.7 Awarding work without tender and providing undue benefit to a contractor

The execution of work without tender process and unwarranted revision of agreed rates by PWD extended undue benefit of ₹92.32 lakh to the contractor.

As per Para 2003 of Kerala Public Works Department Manual, works shall normally be awarded through open tenders after getting administrative and technical sanction and ensuring provisions of funds in the Budget.

Secretary to Government, PWD sanctioned (December 2012) re-construction of the partially collapsed Menonpara bridge across Korayar river in Nattukal-Velanthalam State Highway in Roads Division, Palakkad through M/s. Kerala State Construction Corporation Limited (KSCC) without inviting tender at an estimated cost of ₹10.15 crore to avoid delay in tendering process. The Superintending Engineer (Roads and Bridges), North circle, Kozhikode (SE), awarded (January 2013) the work to KSCC at a cost of ₹9.31 crore. The site was handed over (January 2013) to the contractor for completion of work in 18 months. PWD revised (March 2013) the sanction to ₹18.30 crore after including road improvement work of nine kms in place of three kms originally estimated. The work was completed in May 2014. The contractor was paid ₹17.49 crore up to June 2015.

One of the items of work included in the agreement schedule for the construction of bridge was “Boring through all classes of soil for cast *in situ* bored piles with concrete mix M25, 1.20 metre internal diameter anchoring of pile in rock for a minimum depth of 50 centimetres etc”. The work involved construction of 28 piles, 12 piles for piers each having an average depth of nine metre and 16 piles for abutment each having an average depth of 10 metre. The total length of piles was estimated to be 270 m and the agreed rate was ₹16,344 *per* metre. However, during actual execution, Chief Engineer, PWD Roads and Bridges (CE) revised (May 2013) the rate of the above item from ₹16,344 to ₹34,017 *per* metre citing reasons such as increase in average depth of piles from nine to 19 m due to non availability of hard rock at the estimated depth, error in calculation of hire charges for piling plant and use of M Sand⁵ due to scarcity of river sand. CE sanctioned (May 2013) the rate of above item as ‘extra item’ and SE executed (June 2014) a Supplementary Agreement for a total length of 549.85 m. An amount of ₹1.87 crore was paid (July 2014) to the contractor for the ‘extra item’.

Audit scrutiny (February 2014) revealed the following:

- The bridge had collapsed in August 2010 and the Government decided to take up re-construction work only after a lapse of two-and-a-half years of collapse. Awarding of work to KSCC only without inviting

⁵ Mineral sand – This is at times used as an alternate for river sand.

open tenders after two-and-a-half years was lacking not only in justification but it was also against manual provisions which advocate transparency in selection of bidders through open competition.

- Items of work which do not form part of the original Agreement Schedule are treated as “Extra items”. In this case, the item “boring cast *in situ* piles”, was already existing in the Agreement Schedule. As such, it cannot be subsequently treated as an “extra item”.
- The contractor is expected, before quoting his rates, to inspect the site of the proposed work and assess the availability of specified materials. He is also expected to get himself acquainted with the sanctioned estimate, approved plans and drawings. Once his rates have been accepted and agreement finalized and signed, he is bound by the same and cannot claim its revision on grounds of errors in sanctioned estimates, un-availability or scarce availability of the specified materials etc.
- In the name of approving an “extra item”, the Department has resorted to revision of rates and specifications, after the award of work, on grounds of “scarce availability of river-sand”, “error in calculation of hire charges of piling plant” and made an extra payment of ₹97.17 lakh to KSCC. The action of the department was wrong as the ground cited for their action were not valid.

Thus, undue revision of rate resulted in extra payment of ₹97.17⁶ lakh to the contractor.

Government replied (October 2015) that the work was entrusted to KSCC to avoid delay as the tendering procedure would have taken long time. Further, the rates for piling were revised as the depth of piling work had to be increased from 270 m to 549 m during execution. Besides, due to non availability of good quality of river sand, the M sand was substituted and that there was some mistake in preparation of data.

The reply of the Government was not acceptable because the period of two-and-a-half years between the date of collapse of bridge and award of work for re-construction was reasonably adequate for completing all open tender formalities including invitation of competitive tenders so that the work could be awarded without compromising transparency instead of giving to KSCC only. Further, the revision of rates for piling was also not acceptable as the rate agreed by the contractor for piling was *per* metre and not for casting entire pile for a specific length. Besides, rate once concluded in the agreement signed by both the parties, was not required to be revised.

Thus, unwarranted revision of rate resulted in extension of undue benefit of ₹92.32⁷ lakh to the sub-contractor of KSCC.

⁶ (₹34,017 - ₹16,344) x 549.85m

⁷ ₹97.17 lakh less ₹4.85 lakh being five *per cent* margin of KSCC.

5.8 Wasteful expenditure on construction of fender piles in a bridge work

Department constructed “fender piles” for protecting a bridge from the impact of collision with barges even though bridge did not have scope for navigation of heavy vessels resulting in wasteful expenditure of ₹3.12 crore.

The Public Works Department (PWD) awarded the work of the construction of ‘Thadikkakadavu Bridge’ across Periyar river by Roads division, Ernakulam for ₹27.51 crore. The site was handed over (June 2012) to the contractor for completion of work in 18 months (December 2013). The work remained incomplete (July 2015) and the contractor had been paid ₹15.71 crore (July 2015).

The bridge was designed to rest on a foundation of bored cast-*in-situ* piles, for which 2,650 metres of piles at a unit rate of ₹27,056 per metre were planned. During execution, the length of piles was increased to 3,220 metres of which 729.79 metres were provided as ‘fender piles’⁸ in a separate pile group, upstream and downstream of the bridge. The department stated that the fender piles were required to protect the bridge from the impact of collision from heavily loaded cargo boats moving from Nedumbassery airport to Kochi city. The cost of construction of fender piles was ₹3.12 crore⁹.

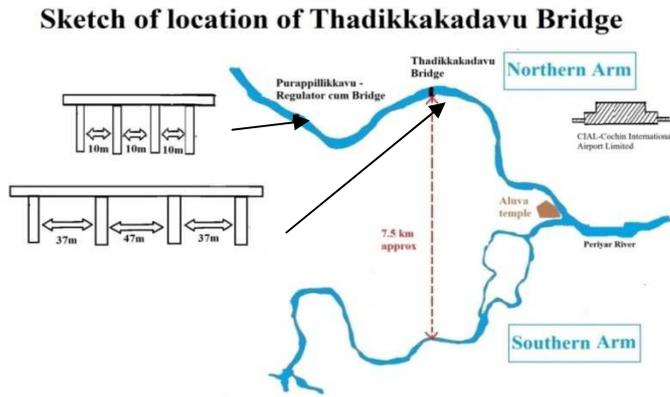
Audit observed that though the original design of the bridge was approved (March 2012) by the Design Research and Investigation Quality Control wing (DRIQ), under the control of Chief Engineer (Designs) as stipulated in the PWD manual, the design of fender piles was approved (November 2012) by the CE himself, which means that the DRIQ was not involved in the change of design of fender piles.

It was further noticed that there was no specific request from various stakeholders / departments (KSINC, SWTD, IND etc.) regarding provision for fender piles. Moreover, the route identified for connecting Nedumbassery airport with Kochi city passes through the southern arm of river Periyar, whereas the bridge was constructed on the northern arm as shown in the sketch attached.

Further, there was no infrastructure for anchoring of cargo boats anywhere near the Nedumbassery airport. Therefore, the construction of fender piles by adducing to safety concerns from barges / cargo boats was not tenable.

⁸ Fender piles are provided in ports and harbours to absorb the impact of berthing vessels and to avoid damage both to the vessels and the structure which are made of shock-absorbing materials.

⁹ Floating platform for working ₹25.61 lakh (+) anticorrosive treatment to reinforcement ₹4.51 lakh (+) boring and concreting ₹197.45 lakh (+) providing casing pipe ₹75.90 lakh (+) providing reinforcement to concrete ₹43.24 lakh = ₹346.71 lakh less tender rebate ₹34.95 lakh = ₹311.76 lakh say ₹3.12 crore.



Audit also observed that the fender piles were made of concrete with no impact absorbing quality to provide protection either to the bridge structure or to the vessels in the event of a collision. Further, the top level¹⁰ of fender piles constructed was much below the Maximum Flood Level (MFL)¹¹ of the river. The fender piles would not be visible during flood, making it likely to cause damage to the piers of the bridge as well as the barges. Thus, the purpose of protecting the piers with the help of fenders was doubtful.

On being asked, the Secretary, PWD replied (October 2015) that on account of concerns of polluting the drinking water projects at Chowara and Aluva, Cochin International Airport Limited (CIAL) shelved a proposal to develop the Southern branch of Periyar river as a waterway connecting CIAL to Kochi Seaport for cargo movement. An alternative proposal of developing the Northern branch was under consideration of CIAL, and hence, the fender piles were constructed in anticipation of movement of heavy cargo vessels through the same.

The reply was not tenable in view of the confirmation provided by Irrigation Department that there were no plans of developing the Northern branch of Periyar River over which the Thadikkakadavu bridge is constructed, as a waterway connecting CIAL with the Kochi Seaport. Irrigation Department further confirmed that there were bottlenecks for large scale cargo movement from CIAL to Kochi city/seaport through the Northern branch, like insufficient vertical clearance of existing cross structures, insufficient width and depth in a five km stretch between CIAL and Chengal *thodu*.

Thus, the decision to change the designs for providing fender piles was taken without assessing actual requirement and approval of the DRIQ Board which led to wasteful expenditure of ₹3.12 crore on construction of fender piles.

¹⁰ 49.8000 metres

¹¹ 51.825 metres

5.9 Avoidable payment on sinking of wells for foundation of four bridges

Separate payment amounting to ₹2.28 crore was made to the contractors by PWD outside the agreed rate for removing obstacles encountered during sinking of wells for foundation of four bridges.

The special conditions of contract stipulate that the rate quoted shall be inclusive of all the operations contemplated in the specification and tender schedule which covers the incidental work necessary for such operations. The conditions further stated that all items should be carried as per the relevant specification in the Madras Detailed Standard Specification (MDSS) which specifies that when the well has reached the required level care should be taken to see that it is seated properly.

Superintending Engineer, Roads and Bridges, North Circle, Kozhikode (SE), had awarded¹² (March 2011 to July 2012) four bridge works under PWD Roads Division, Manjeri at an estimated cost of ₹24.65 crore in Malappuram district. As per the agreement schedule, one of the items of work was sinking of reinforced cement concrete circular well in all classes of soil other than rock. The sinking process includes scooping of earth to line, level and plumb from inside and below steining with dredgers and other appliances including removal of obstacles. The EE made extra payments of ₹2.28 crore to the contractors of four bridge works towards charges for cutting and breaking down boulders having the size of more than 40 dm³ during sinking of wells and for seating of wells as shown below:

Table 5.1: Details of works showing extra payments made

Sl. No.	Name of work	Particulars of estimated cost and extra payments for well sinking			
		Item (as per agreement)	Estimated cost (₹ in lakh)	Extra payment (₹ in lakh)	Percentage of extra payment on estimated cost
(1)	(2)	(3)	(4)	(5)	[(5)/(4)]x100
1.	Construction of Mythrakadavu bridge	5	6.36	96.12	1,511.32
2.	Construction of Valippadam-Alungalkadavu bridge	6,7	15.15	63.49	419.08
3.	Construction of Thayyilakkadavu bridge	6,7	11.57	30.00	259.29
4.	Construction of Umminikadavu bridge	6,7	15.01	38.51	256.56
Total			48.09	228.12	474.36

Source: Agreements and vouchers

As can be seen from the above table, the percentage of extra payment comes to nearly four times the estimated cost of the agreed item of well sinking and this payment was made without following the usual tender procedure.

In this connection Audit observed the following:

All works except the extra items were put to tender on ‘percentage rate basis’ in which the ‘quoted rate’ was inclusive of all operations contemplated in the

¹² Shri.V.P.Mohammed Ayub, Eranhikode, Edavana, Malappuram, M/s Ernad Engineering Enterprises Ltd., Kodur P.O, Malappuram, M/s Thrimathy Contracting, CPC Centre, Hospital Road, Nilambur.

specifications and tender schedules including incidentals. The workable rate quoted by the bidder was inclusive of charges for removing boulders irrespective of their size. Therefore, the payment for cutting and breaking down boulders of more than 40 dm³ size during sinking of abutments and pier wells and for seating of wells on base, over and above the estimated cost was contrary to the provisions contained in the agreement.

Secretary, PWD stated (October 2015) that the approved design of bridges insisted seating of well foundation upon a levelled hard rock stratum and well kerbs were to be anchored to a minimum 60 cm depth into hard rock and that in order to seat the well foundations, the top layers of rock formations were to be cut and removed as mentioned in design and that the rates for the above rock cutting works were not included in the agreed specifications. Further, the reply stated that the general note in Standard Data Book permitted the payment for cutting down boulders of size above 40 dm³ and wooden logs of size above 100 dm³ if encountered during well sinking.

The reply of the Government was not tenable as the quoted rate was inclusive of all operations contemplated in the specifications and tender schedules including incidentals. The specification in the tender schedule and agreement schedule for the item of well sinking included 'removal of obstacles'. As notes in the Standard Data Book were not made part of the agreements, extra payment for cutting down boulders of size above 40 dm³ was not permissible.

Thus, due to its failure to adhere to the specifications in the tender schedules, the Department had extended undue benefit of ₹2.28 crore to the contractors.

5.10 Extra expenditure due to non-finalisation of tender within the firm period

Lapse of the department in adhering to PWD Manual instructions and Government orders regarding finalisation of tender within firm period resulted in avoidable financial implication of ₹1.56 crore.

According to the provisions of Kerala PWD Manual, consideration of tenders and the decision thereon should be completed well before the date of expiry of the firm period noted in the tender so that the selection notice is sent on or before the expiry of the firm period¹³. In case, selection notice is not issued before the expiry of the firm period, the bidder's offer would stand nullified automatically. In order to avoid such delays, Government had issued (May 2007) instructions prescribing time frame for completion of processing of tenders at various stages. Accordingly, the department shall place the tender before the Government within six weeks from the date of opening of tender followed by its submission before the Government Tender Committee (GTC) within seven days. After approval of proposal by GTC, order shall be issued within one week. The GOK, Finance Department had issued orders (January 2010) that in cases where tender amount is in excess of 10 per cent of Local

¹³ The firm period of a tender is the period from the date of opening of the tender to the date upto which the offer given in the tender is binding on the bidder. The firm period is fixed as the maximum time required within which a decision can be taken on the tender and order of acceptance issued in writing to the bidder, which shall be prescribed in the NIT.

Market Rate¹⁴ (LMR), justification should be submitted along with the tenders.

The Secretary (PWD) issued (December 2011) Administrative Sanction (AS) to the work 'Improvements to Kodumba-Padalikkadu Canal bund road from km 0/000 to 8/200' in Palakkad district at a cost of ₹5.10 crore. Based on Technical Sanction (TS) given by CE, the Superintending Engineer, PWD, Roads and Bridges, North Circle, Kozhikode (SE) invited (January 2012) pre-qualification-cum-tenders (PQ) for works from eligible contractors, fixing date of opening as 6 March 2012. The firm period of tender was 120 days i.e. up to 3 July 2012. Of the two bids received, one was pre-qualified (2 April 2012) by the Chief Engineers' Committee. The SE opened (10 April 2012) the financial bid of the pre-qualified contractor¹⁵ whose quoted rate was 14.89 *per cent* above the estimate rate. After processing the tender, the department accepted (April 2013) the tender rate quoted by the contractor after delay of eight months. In the meantime, the firm period had expired due to which the contractor was not willing (May 2013) to take up the work.

After failing to award the work due to the contractor's unwillingness, the department re-tendered (July 2013) the work which evoked no response. However, citing urgency of the work, the department invited (November 2013) negotiated quotations from 'A' class registered contractors for the work at the same estimate rates in terms of instructions contained in PWD manual. The only quotation received from a contractor¹⁶ was at 48.50 *per cent* above the estimate rate which was accepted (May 2014) by the Department at 45.43 *per cent* above the estimate rate as recommended by the Committee of Secretaries. The work was awarded (May 2014) to the contractor for ₹7.24 crore. The work which was scheduled for completion by May 2015 had been extended up to February 2016. An amount of ₹5.05 crore had been paid for the work done till September 2015.

Audit scrutiny relating to the first tender revealed that though the tenders were opened on 6 March 2012, the SE had furnished LMR justification only on 3 December 2012, after a delay of eight months as against six weeks as per guidelines. The delay in furnishing the LMR by SE resulted in delayed approval of tender by PWD and GTC. The LMR justification (December 2012) was 43.65 *per cent* above estimate rate. Audit observed that had the tender been accepted within the firm period, the work would have been executed by the first contractor at a cost of ₹5.68 crore as against agreed value of ₹7.24 crore.

On this being pointed out, the SE stated (August 2014) that the delay in forwarding tenders to PWD was due to the delayed response of the first contractor to negotiations. The reply was not tenable due to the reason that had the SE prepared LMR justification soon after the opening of financial bid, it would have been evident that the tender excess of 14.89 *per cent* above the Estimated Probable Amount of Contract offered by the first contractor was far below the LMR (December 2012) of 43.65 *per cent*.

¹⁴ The Local Market Rate for materials and labour shall be fixed by the EE twice every year for preparing LMR justification for the purpose of estimates for tender approval.

¹⁵ M/s PK Construction Company, Muvattupuzha.

¹⁶ M/s P.G Constructions, Pullani, Oarambil, Thrithala, Mezhathur P.O, Palakkad.

Thus, the non-approval of the first tender by the department within the firm period due to non-preparation of LMR in time and delay in submission of tender documents adhering to the time schedules as per guidelines resulted in avoidable financial implication of ₹1.56¹⁷ crore which call for fixing of responsibility of the officials at fault for the inordinate delay in finalising the tender and initiate appropriate action against them.

5.11 Double payment to the contractor for same work through Hand Receipts

Failure to exercise required verification by PWD resulted in double payment for executing an item of work in the construction of Mythrakadavu bridge across river Chaliyar in Malappuram District.

Article 40 (b) of the Kerala Financial Code provides that every Government servant who incurs or authorises the incurring of any expenditure from public funds should see that the expenditure should not be *prima facie* more than the occasion demands. He is expected to exercise the same diligence and care in respect of all expenditure from public moneys under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

Superintending Engineer, Roads & Bridges, North Circle, Calicut,(SE) had executed an agreement (March 2011) with Shri.V.P.Mohammad Ayub, contractor, Erahikode, Edavana, Malappuram District, for the construction of Mythrakadavu bridge across river Chaliyar in Malappuram District. The work was executed by the Executive Engineer, Roads Division, Manjeri (EE).

Audit of vouchers (July 2015) of Public Works Department transactions (PWD) in the office of the EE revealed that the EE had made (July 2015) a payment of ₹14.93 lakh through a Hand Receipt (HR) prepared by the Assistant Engineer, Bridges Section, Manjeri (AE) and verified by the Assistant Executive Engineer, Bridges Sub Division, Manjeri (AEE) for an item of work “cutting and breaking into small pieces of boulders size during sinking of wells and seating of well – pier-2”. The payment recorded at page 35 of Measurement Book No.7732, was made through the Bill Discounting System (BDS) and adjusted in the Monthly Account of July 2015 through a Transfer Entry (July 2015). The EE made (July 2015) payment based on the sanction accorded in respect of an item of work in the Daily Labour Report by the Chief Engineer, Roads & Bridges (CE), Thiruvananthapuram.

As the sanction was more than two years old, a further scrutiny in Audit revealed that a total amount of ₹55.12 lakh (including the amount of ₹14.93 lakh related to the work) was paid during July 2015 for executing the item and that the amount of ₹14.93 lakh had already been paid earlier during May 2013 (CBV 150^{Dn} of May 2013) based on the same sanction for executing the same item. Both the payments, i.e. May 2013 and July 2015 were made through HR prepared by the then AE and verified by the then AEE and recorded on Page 6 of Measurement Book No.9360.

Further Audit investigation revealed that only one Daily Labour Report (DLR) was sanctioned in the Divisional records to support the payment of ₹14.93

¹⁷ ₹7.24 crore - ₹5.68 crore = ₹1.56 crore

lakh (May 2013). No DLR was available to support the second payment of July 2015 which confirmed that payment of ₹14.93 lakh made to the contractor during July 2015 through the BDS was double payment. On this being pointed out by Audit (December 2015), the EE admitted the double payment and got the amount remitted from the contractor in December 2015.

Audit of Internal Control Mechanism of the office of the EE, further revealed that the office was neither maintaining nor monitoring the requisite Control Registers as stipulated in Kerala Public Works Account Code Para No.10.5 (Works Abstract), Para Nos.10.6 and 5.3.3 (Works Register), Para No.10.7 (Contractors' Ledger) and Para No.22.2.7 (Miscellaneous Sanction Register). The AE was, thus, not exercising any preliminary checks on the contractors' claims. Thus, disregard for the mandatory checks of consulting previous records by the EE led to double payment of ₹14.93 lakh for the same work.

Further, the double payment of July 2015 was made through the newly introduced Bill Discounting System (BDS). The Finance Department (FD) transfers the details of only those Bills into the BDS database which are processed and recommended by the CE in 'EMLI'¹⁸ software and for which the FD had agreed to issue a Letter of Credit (LoC). The fact that the LoC for the payment of ₹14.93 lakh was issued by the FD in July 2015 and that the payment of July 2015 occurred through BDS, confirmed that the claim of the contractor was processed and recommended throughout the entire chain of authorities from the AE level to the CE level and that none of the authorities could detect the double payment being attempted. This revealed as under.

- a weak Internal Control Mechanism in the Roads and Bridges wing of the PWD;
- recovery of double payment in this case was at the instance of Audit but no action has been taken against the officials responsible for this. Besides, the present system gives scope for such double payments escaping detection in future; and
- the software EMLI was not able to detect the fact that a Letter of Credit had already been generated against the same sanction at an earlier date.

In this respect, Audit recommends as under:

1. The commission of double payment coupled with the weakness of the Internal Control Mechanism of the Department requires thorough investigation, preferably by Vigilance authorities to pre-empt any intentional negligence/fraud;
2. The software 'EMLI' may be modified so that only one Letter of Credit is generated against a sanction and any further attempt to generate Letter of Credit on the same sanction would be rejected by the system automatically; and
3. The payment of huge amounts through HRs (KPW Form 24), instead of the Forms KPW 22 (for making first and final payment to contractor) or KPW 23 (for making running payments), may be discouraged as the HRs

¹⁸ EMLI-Effective Management of Letter of Credit Issuance

lack the basic control measures and accountability provisions as compared to Forms KPW 22 or 23 which help to pre-empt irregular payments.

During Exit Conference, the Chief Engineer stated that this was the first instance and no other case of double payment was currently known to the Department. As regards enquiry about such instances taken place in other Divisions also, the Secretary to Government stated that assurance could be furnished only after an investigation in the matter. Thus, thorough investigation is required in the matter to guard against the recurrence of such serious lapses in future.

WATER RESOURCES DEPARTMENT

5.12 Extra payment to contractor due to omission in the specification of piling work in the agreement schedule

Description of work in agreement schedule was at variance with provisions in data sheet and treating side protection work as extra item by Water Resources Department had resulted in extra expenditure to the tune of ₹7.05 crore.

The Principal Secretary, Water Resources Department (December 2011) accorded Administrative Sanction for ₹60 crore for constructing a Regulator-cum-Bridge (RCB) at Pathalam across Periyar river under Irrigation division, Ernakulam. The tendered value of this work was ₹51.36 crore which was inclusive of the cost and working charges of steel liners for 'providing bored cast *in situ* RCC piles'. The Superintending Engineer, Irrigation Central Circle (SE), Thrissur awarded (July 2012) the work to a contractor¹⁹ for an amount of ₹49.72 crore. The work commenced in July 2012 for completion in 24 months. During the course of construction, Additional Chief Secretary, Water Resources Department had approved (April 2014) a revised estimate of ₹64.90 crore due to excess over agreed quantities in the original estimate and also for allowing extra items of work²⁰. The work was under progress as of March 2016.

(i) The RCB was proposed to be founded on bored cast *in-situ* piles in Reinforced Cement Concrete (RCC) as per the agreement schedule. The estimates prepared by CE included the cost of *in-situ* piles in RCC and providing casing pipe with MS plate (i.e. steel liner). Accordingly, the rate for 1,000 mm dia pile foundation was ₹20,528, ₹7,638 for RCC and ₹12,890 for steel liner. Similarly, for 500 mm dia foundation, the cost was ₹8,902, ₹1,911 for RCC and ₹6,991 for steel liner.

While floating the tender, the work description for these items did not include the use of steel liners and stated about the execution of RCC only. However, the rate mentioned for this work in the tender *inter alia* included the cost for steel liners. It was, however, noticed that during construction, steel liners were

¹⁹ M/s Marymatha Construction Company, Marymatha Square, Arakuzha road, Muvattupuzha P.O, Ernakulam district.

²⁰ Putting of ring bund, providing MS sheet piling work, providing and applying elastic and elastomeric membrane

not used and hence, the Executive Engineer, Irrigation Division, Ernakulam (EE) had deducted an amount of ₹3.50²¹ crore on account of non-usage of steel liners for bored cast *in-situ* pile work which the contractor had claimed while submitting CC VII and part bill.

The contractor represented (May 2013) against the deduction stating that the work was being executed as per specifications provided in the agreement schedule which did not give any information regarding the data of this item. The Irrigation Department opposed (May 2013) the plea of the contractor stating that data was inclusive of the rate of steel liner, deduction was made from the payment to the contractor as the steel liners were not used.

During review meeting (June 2013) on the progress of this work by Minister for Water Resources and Minister for Public Works, the representation of the contractor was discussed that the contractor was objecting to the deduction towards cost of steel liners used in the said RCC work which had resulted in huge financial loss to him and therefore he was unable to proceed further with the work. In the review meeting, it was decided that Principal Secretary, Water Resources Department would study this issue by entrusting this work to Chief Technical Examiner (CTE) and submit a report in the matter.

On the basis of the report submitted by the CTE, the Government observed that the plea of the contractor was valid and directed (January 2014) that the deducted amount may be released. Accordingly, the EE released (March 2014) the deducted amount of ₹3.50 crore to the contractor. The contractor had been paid a total amount of ₹6.48 crore on account of the use of steel liners in the work up to September 2015.

Audit observed that while preparing the estimates, the cost of providing steel liners in the pile work was approved by Chief Engineer, Irrigation and Administration (I&A) in the data sheet. However, the same was not included in the tender specifications. Thus, due to the omission in preparing the tender schedule in tune with the data sheet prepared for working out estimates, the contractor was demanding the payment on account of the use of steel liners in the RCC work whereas actually he had not used the steel liners. As such, he was eligible for the payment for doing RCC work only and not for steel liners which he had not used while executing the work as certified by the officer in-charge of the work. Thus, the department had rightly deducted an amount of ₹3.50 crore from the payment claimed by the contractor.

Thus, due to the non-inclusion of the use of steel liners in RCC work in the tender specification, the contractor had claimed and received the payment of ₹6.48 crore up to September 2015, though he was not eligible for the same. The decision of the Government to release the payment was also not in order as the payment is always made for the execution of actual work executed, measured and certified by the department and not merely on the basis of rates mentioned in the estimate. As such, the excess payment of ₹6.48 crore made for the work relating to steel liners, which was actually not executed by the contractor, requires to be recovered from the contractor.

(ii) While revising the estimate (April 2014) and executing supplementary agreement (May 2014) for execution, three items of works were included as

²¹ 1,738.97 m of 1,000 mm diameter piles and 1,795.27 m of 500 mm diameter piles

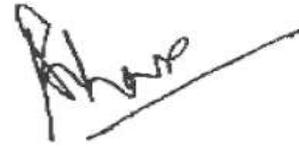
'extra items'. One such 'extra item'²², was providing MS Sheet piling work using sheet pile with sufficient anchorage for protecting nearby industries and buildings while excavating right side abutment and lock wall foundation. An amount of ₹56.97²³ lakh was paid (September 2015) for the item of work. As the rate agreed by the contractor in the original tender agreement was after ascertaining the site conditions as per clause 47 of MDSS²⁴, the above item of work cannot be treated as 'extra item'. As such, the payment of ₹56.97 lakh made was irregular.



**Thiruvananthapuram,
The 5 MAY 2016**

**(AMAR PATNAIK)
Principal Accountant General
(Economic and Revenue Sector Audit), Kerala**

Countersigned



**New Delhi,
The 12 MAY 2016**

**(SHASHI KANT SHARMA)
Comptroller and Auditor General of India**

²² Extra item 2 of Supplementary Agreement II dated 2 May 2014.

²³ ₹58.85 lakh less tender rebate of 3.20 per cent.

²⁴ Madras Detailed Standard Specification is part of tender documents.