

CHAPTER-V

COMPLIANCE AUDIT OBSERVATIONS RELATING TO PUBLIC SECTOR UNDERTAKINGS (OTHER THAN POWER SECTOR)

Himachal Pradesh State Electronic Development Corporation Limited

5.1 Purchase of unwarranted software

Failure of the Company in securing its financial interests involving extra cost towards unnecessary bundling of Visio software resulted in non-recovery of ₹ 84 lakh, with consequential interest loss of ₹ 27.82 lakh.

During the budget speech 2014-15, the Chief Minister, Himachal Pradesh announced to provide 7,500 laptops under Rajiv Gandhi Digital Student Yojana to meritorious students. Accordingly, the Director of Higher Education, Government of Himachal Pradesh (Education Department) instructed Himachal Pradesh State Electronics Development Corporation Limited (Company) to arrange for proforma invoice for supply of 7,500 laptops. The Company invited (July 2014) Expression of Interest (EoI) for procuring 7,500 laptops. As per the specifications received from the Education Department, the laptops were required to be preloaded with Microsoft Windows 8.1 Operating System, MS Word, MS Excel and Power Point under Shape the Future (StF) Scheme of Microsoft Corporation.

The Company placed (March 2015) a supply order of 7,500 laptops on M/s Acer India (Pvt) Ltd (L-1 bidder) for ₹ 14.74 crore plus VAT. Though the Visio Software¹ was not part of the requirement / EoI but it was stated to be bundled under StF Scheme by a representative of the Microsoft Corporation, accordingly supply order for 7,500 licenses of Visio software for ₹ 1.95 crore (including service tax and VAT) was also placed on Innovative Secure Technologies Private Limited (ISTPL).

The Additional Chief Secretary (IT), while processing second procurement order for 10,000 laptops under the similar arrangement, enquired (March 2016), from the Marketing Executive of Microsoft as to whether the Visio software is bundled with Microsoft Windows 8.1, MS Word, MS Excel and Power Point under StF Scheme and can it be excluded from the Scheme, as it was not required by Education Department. In response, Microsoft clarified (April 2016) that the StF Scheme included only MS Office and Windows and inclusion of any other product a value to students is a customer's prerogative and not mandatory.

The Company cancelled (April 2016) the second supply order of Visio software placed (April 2016) on ISTPL for the year 2015-16. The Company further pursued (July 2016 and onwards) with Microsoft the issue of already

¹ Microsoft Visio is software for drawing a variety of diagrams. These include flowcharts, org charts, building plans, floor plans, data flow diagrams, process flow diagrams, business process modeling, 3D maps, and many more. It's a Microsoft product, sold as an addition to MS Office.

supplied 7,500 Visio software during 2014-15 through misleading information provided by their representative. Microsoft agreed (January 2017) to refund the amount by raising the issue through ISTPL. Had the Company verified the facts regarding Visio software being bundled with Microsoft Windows 8.1, MS Word, MS Excel and Power Point, under StF Scheme, directly from the Microsoft at the first instance, the situation could have been avoided. However, out of the total extra payment of ₹ 1.95 crore, the Company could recover only ₹ 1.11 crore (₹ 0.91 crore during June 2017 and ₹ 0.20 crore during July 2017) leaving ₹ 84 lakh unrecovered. This unrecovered amount of ₹ 84 lakh was deducted by the ISTPL on account of duties and taxes (Service Tax, VAT, Income Tax, etc.). Audit observed that the Company failed to recover the cost in full and did not take any action against ISTPL for selling the Visio software through unfair trade practices by lodging FIR or blacklisting the supplier even after elapse of 15 months.

Thus, the Company failed to secure its financial interests and incurred extra cost for unnecessary purchase of Visio software without verifying the fact, directly, from the Microsoft. Further, not taking any action to get the amount of taxes and duties refunded, resulted in non-recovery of ₹ 84 lakh, with consequential interest loss of ₹ 27.82 lakh² up to September 2019.

The Management may ensure that the purchase orders are placed as per the requirements of the clients after thorough verification of all facts and information directly from the suppliers.

The matter was reported to the Government/Management (August 2018); their reply was awaited (September 2019).

Himachal Pradesh Financial Corporation

5.2 Extension of undue benefit to loanee

Failure of the Company in executing the decree and settling the loan below the prescribed limit of One Time Settlement resulted in extension of undue benefit of ₹ 22.67 lakh to the loanee.

The Himachal Pradesh Financial Corporation (Company) provides medium and long term credit to industrial undertakings. In case of default in repayment of loan or any instalment by the loanee, Section 29 and 30 of the State Financial Corporation (SFC) Act, 1951 provides that the Financial Corporation shall have the right to take possession of the industrial concern and sell the property pledged, mortgaged, hypothecated or assigned to it by the loanee. Section 31 of the SFC Act further provides that the Company may apply to the district judge for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Company as security.

The Company sanctioned (February 2004) a term loan of ₹ 28.66 lakh and a soft loan of ₹ 10.00 lakh to a loanee³ for setting up a hotel at village Chauri Sub-tehsil Junga, District Shimla. The loan was scheduled for repayment in

² ₹ 84,00,000 x 8.11% x 49 months (September 2015 to September 2019)

³ Keonthal Heritage.

23 quarterly instalments starting from October 2005 to April 2011. As security, the loanee mortgaged land measuring 17 biswas together with the building to be constructed thereon, as primary security and 16 bighas of land as collateral security. Against the sanctioned loan, the loanee availed ₹ 22.50 lakh (including soft loan of ₹ 4.36 lakh) between July 2004 and May 2005. The loanee, from the very beginning (October 2005) defaulted in repayment, consequently, the Company issued (March 2006) a Show Cause Notice and thereafter, issued (May 2006) recall notice under section 30 of the SFC Act, demanding the entire outstanding loan of ₹ 22.50 lakh along with accrued interest of ₹ 1.78 lakh. The loanee failed to respond to the recall notice and the Company filed (September 2006) a recovery suite under section 31 of the SFC Act, in the Court of District Judge, Shimla, which was finally decreed (September 2014) in favour of the Company for ₹ 26.52 lakh (outstanding as on 31.08.2006) together with cost and future interest at the agreed rate from 01.09.2006 till the date of payment, after protracted litigation.

Audit noticed that, meanwhile, the loanee approached (August 2014) the Company for clearing the loan under OTS. As per the One Time Settlement (OTS) scheme approved by the Board of Directors of the Company in 2010, the minimum OTS amount recoverable shall in no circumstances be less than 90 *per cent* of realisable value of primary and collateral security available with the Company. The Company accepted (December 2014) the offer of ₹ 50.00 lakh made by the loanee against the recoverable amount of ₹ 72.67 lakh under the OTS. The loanee finally cleared the OTS amount during September 2016, along with interest for delayed payment. While accepting the OTS offer of ₹ 50 lakh from the loanee, the Company relaxed the guidelines of the scheme as 90 *per cent* of the realisable value of primary & collateral security (₹ 93.20 lakh) was ₹ 83.88 lakh. Further, despite holding total security of ₹ 93.20 lakh, the Company did not opt for execution of legal decree through which it could have recovered ₹ 72.67 lakh including interest as allowed by the Court.

Thus, failure of the Company in executing the decree and settling the loan under OTS that too in violation of the prescribed limit of the OTS scheme resulted in extension of undue benefit of ₹ 22.67 lakh to the loanee.

The Management in its reply stated (July 2018) that practically it would be very difficult to sell the mortgaged landed property to recover the entire amount.

The reply of the Management is not tenable as the Company had made no efforts to auction the mortgaged property and accepted the OTS offer of the loanee violating the minimum prescribed limit, of 90 *per cent*, fixed in its own OTS scheme.

The Management should ensure that in future all cases under OTS should be settled strictly as per the Scheme/guidelines issued by the competent authorities from time to time.

The matter was reported to the Government (April 2018); their reply was awaited (September 2019).

Himachal Pradesh General Industries Corporation Limited

5.3 Undue favour to private parties

Non-adjustment of credit sales while allowing quantity discount on monthly sales resulted in inadmissible cash discount of ₹ 55.65 lakh.

The Himachal Pradesh General Industries Corporation Limited (Company) manufactures country liquor in its Country Liquor Bottling Plants (CLBP) at Mehatpur and Parwanoo. The Company appointed private parties, through open tenders, as its distributors on commission basis for wholesale vending of its liquor to various retailers in each district of the State. The appointed distributors lift the liquor from CLBP either against payment of cash or credit sale basis.

The Company introduced (April 2008) a scheme of quantity discount to boost the sale of liquor and encourage cash payment. As per the scheme, discount was applicable only on the quantity lifted on cash basis by the distributors, during the said month. The rates of discount for lifting of six to 20 trucks per month ranged between ₹ 8 per box⁴ and ₹ 13 per box and for lifting up to 5 trucks the rate of discount was to be allowed as per tender rates.

The matter regarding inadmissible payment of cash discount of ₹ 19.84 lakh during 2008-2010 was pointed out *vide* para 4.6 of the C&AG's Audit Report (Commercial) for the year ending 31 March 2012, Government of Himachal Pradesh. In response to this, the State government informed (October 2015) the Honourable Committee on Public Undertakings (COPU) that the inadmissible amount paid to the parties has been recovered from them and the management of both the CLBP has been directed to implement the discount policy strictly in future.

Audit scrutiny showed (July 2017) that CLBP, Parwanoo and Mehatpur allowed total discount of ₹ 3.24 crore to five distributors against admissible discount of ₹ 2.68 crore due to non-adjustment of the quantity of liquor lifted on credit sales basis during the respective months which resulted into loss of ₹ 0.56 crore during 2014-17. Audit further noticed that the action of the Company not only violated its stated discount policy but also defied the commitment made by the State government before the COPU.

The Management in its reply stated (August 2018) that the quantity discount was given only on that much quantity for which payment had been received in a particular month for the excess quantity lifted; only handling charges had been given. The payments might have delayed due to direct deposits of Cheque by the contractors in the bank account of the HPGIC Ltd. instead delivering Cheque, physically.

The reply was not acceptable as this is a repeated failure causing loss to the Company and failure to ensure control / check such instances even after giving assurance to COPU regarding implementing the discount policy strictly in future. Moreover, these distributors had lifted total liquor valuing ₹ 127.12 crore out of which quantity valuing ₹ 97.66 crore was only lifted on

⁴ Each box contains 12 bottles.

monthly cash basis and the remaining quantity was credit sale. The Company had allowed discount on the basis of total cash received during the month whereas no discount was admissible on cash received against the sale of previous month. Further, the payments received through cheques, which were not cleared during the same month cannot be treated as cash sale for particular month.

The Management should consider fixing responsibility for the lapse and streamline its financial control to avoid such lapses in future.

The matter was reported to the Government (May 2018); their reply was awaited (September 2019).

Himachal Pradesh State Handicraft & Handloom Corporation

5.4 Loss of potential revenue

Failure to rent out the vacant accommodation for the last 81 months after opening of tenders resulted in loss of potential revenue of ₹ 24.30 lakh during the period from April 2012 to September 2019. This loss would increase further, until the Company rents out the premises.

The Himachal Pradesh State Handicraft & Handloom Corporation (Company) had undertaken production of livery items in its Bilaspur Complex for supplying to class IV employees of the State government. The State government discontinued the supply of livery items to its employees in 2002, thereafter, there was no demand for its products. Consequently, the operation of this unit rendered unviable. The complex consists of 2,900 sq. mtr area including one hall (5,187.06 sq. ft.) and four rooms having size of 300-500 sq. ft. each. As there was no production activity, therefore, the hall having 5,187.06 sq. ft. area was rented out to HP State Civil Supplies Corporation (April 2007) at monthly rent of ₹ 19,544 per month but they vacated the same during (May) 2009.

To rent out this complex further, the Company invited tenders (4th November 2011) through the newspapers and the same were opened on 23rd November 2011 by the Committee constituted for finalising the offers of the parties. After evaluating the bids of three participants, the Committee recommended renting out of premises to the highest bidder⁵ at a monthly rent of ₹ 25,000 for a period of three years with a provision of extension for another three years with 10 per cent enhancement. However, the Management did not accept (April 2012) the recommendations of the Committee on the plea that maximum bid of ₹ 25,000 appears to be less in comparison to the area available for renting out and ordered to invite fresh tenderers. Thereafter the Company failed to invite fresh tenders and no reasons to justify inaction was found on record. Thus, due to non-acceptance of the recommendations of the Committee to rent out the premises @ ₹ 25,000 per month with 10 per cent enhancement after three years deprived the Company from earning a potential revenue of ₹ 24.30 lakh for the period from April 2012 to September 2019. This loss would increase further until the Company rents out the premises.

⁵ M/S Guru Narayan Suri & Co., Lower Main Market, Bilaspur.

As the premises are lying vacant / unutilised, the possibility of deterioration of the building cannot be ruled out.

The Management stated (May 2018) that during November 2017 the premises were rented out to M/S H.P. Beverages Corporation Limited. The reply of the Management is not tenable as prior to taking possession and starting its operation from the hired premises, the State government had decided (January 2018) to wind up the H.P. Beverages Corporation Limited.

The Management should consider fixing of responsibility for the lapse and ensure strict compliance of its orders in future.

The matter was reported to the Government (May 2018); their reply was awaited (September 2019).

Himachal Pradesh State Industrial Development Corporation

5.5 Thematic Audit on execution of deposit works by Himachal Pradesh State Industrial Development Corporation Limited

The Company executed 448 deposit works during last three years out of which 92 works were test checked and it was found that it had started the execution of works before technical sanction. The financial management of the Company was not efficient and effective, as it failed to, restrict expenditure up to the amount of funds received (₹ 21.29 crore excess over funds received) and timely return savings of ₹ 12.43 crore to the respective clients. The conditions of the contract were not adhered resulting in extra payment / expenditure of ₹ 4.23 crore. Monitoring and internal control was also inadequate and ineffective as the Company did not monitor the progress of works and failed to ensure its statutory obligations.

5.5.1 Introduction

Himachal Pradesh State Industrial Development Corporation Limited (Company) was incorporated (November 1966) as a wholly owned State government Company with an objective to promote industrial development in Himachal Pradesh. The Company was primarily engaged in execution of deposit works (civil and electrical at cost plus agency charges) of the departments, public sector undertakings and other bodies of Government of Himachal Pradesh (GoHP). Apart from deposit works Company was also carrying out other activities as detailed below:

Table 5.1: Detail of revenue earned from different activities

						(₹ in lakh)
Sl. No	Particulars	2015-16	2016-17	2017-18	Total	Percentage contribution
1	2	3	4	5	6	7
1	Agency charge and contingency on execution of deposit works	775.98	1,247.23	1,064.42	3,087.63	54.60
2	Income from development and sale of industrial plots with related activities	273.47	589.34	544.88	1,407.69	24.89

1	2	3	4	5	6	7
3	Interest income on loan to industries	170.05	98.92	52.18	321.15	5.68
4	Net income from trading of iron & steel and spray oil	46.54	215.02	191.03	452.59	8.01
5	Commission on carrying and forwarding of bitumen	77.16	93.20	109.06	279.42	4.94
6	Rent income from sheds	31.78	33.54	41.10	106.42	1.88
	Total	1,374.98	2,277.25	2,002.67	5,654.90	100.00

(Source: Annual accounts)

The Company has not formulated its own Manual / procedures for planning, execution and monitoring of deposit works, however, in absence of Company's own Manual / procedures, it is following the HPPWD / CPWD manual. Schedule of rates published by HPPWD / CPWD and other instructions of State / Central government for execution of deposit works, wherever applicable.

The present audit was conducted between March 2018 and May 2018 to evaluate the execution of deposit works during last three years from April 2015 to March 2018. During the period covered under audit the Company, executed 448 deposit works (including 55 works of two State of the Art Industrial Areas at Kandrori and Pandoga) for 25 Departments / bodies of GoHP amounting ₹ 243.16 crore (value of work done) on which it earned agency and contingency charges of ₹ 30.88 crore comprising 54.60 per cent of its total income. Out of total 448 works, 92 (including 31 works of Kandrori Project and 24 works of Pandoga), involving expenditure of ₹ 171.83 crore, were selected for examination by using stratified random selection method.

5.5.2 Organisational set up

The Management of the Company is vested in the Board of Directors (BoDs) which comprises of Chairman and 14 members appointed by the GoHP. The Managing Director is the chief executive of the Company who is assisted by a General Manager and a Superintending Engineer (SE). The SE is assisted by five Executive Engineers (EE), one at Headquarters and four in the field Divisions⁶.

5.5.3 Audit Findings

Audit findings have been grouped broadly under four categories viz., Planning, Financial Management, Execution of Works and Monitoring & Internal Control.

5.5.4 Planning for execution of deposit works

Central Public Works Department (CPWD) Manual⁷ provides that the work shall be commenced after obtaining technical sanction from the competent authority.

Out of 92 works test checked, the Company, awarded 10 works without according technical sanction with estimated cost of ₹ 44.96 crore and got them

⁶ Shimla, Baddi, Dharmshala and Mehatpur.

⁷ Para 2.34.

completed after incurring expenditure of ₹ 27.64 crore between June 2013 and November 2017.

5.5.5 Financial Management

Financial management relating to deposit works involves timely and promptly recovering the dues of the Company and at the same time, making the payments wherever due, in prompt manner.

The financial management of the Company was not efficient and effective as the Company failed to, safeguard its financial interest by obtaining funds from its clients in advance, out of 448 works expenditure in 85 works (including 78 completed works) was incurred in excess (₹ 21.29 crore) of the deposited amount between May 2014 and March 2018. The amount of excess expenditure was met from its own resources and by diverting funds received for other works, the Company failed to collect the excess expenditure from the client departments timely. It failed to refund the savings of ₹ 12.43 crore to the client departments promptly, in 93 out of 448 works the savings ranging between ₹ 0.04 lakh to ₹ 2.23 crore were not refunded to the client departments.

(i) Short deposit of EMD

Guidelines issued by GoHP (October 2013) provides that Earnest Money Deposit (EMD) needs to be incorporated as per the rates prescribed. The Company instead, prescribed the EMD at two *per cent* of the estimated cost of the work in 330 tenders, invited during April 2015 to April 2018. Fixing the EMD at two *per cent* resulted in short deposit of ₹ 1.42 crore as EMD.

5.5.6 Execution of works

The Company gets the deposit works executed through contractors by inviting tenders.

Non-adhering tender procedures

For smooth execution of the works and to ensure fairness in award, the Company is required to adhere the standard tendering process. Deficiencies relating to non-adherence of tendering procedures were:

- The Company did not establish any mechanism to fix the timeline for scheduling the activities involved from receipt of funds to award of work. In 24 out of 92 works test checked, after receipt of funds the Company took four months to 20 months for preparation of detailed estimates, inviting tenders and award of work. In absence of any fixed schedule, the reasonability of the time taken by the Company could not be ensured.
- The Company, ignoring its own Delegation of Powers, awarded six works aggregating ₹ 3.03 crore (ranging between ₹ 3.57 lakh and ₹ 94.76 lakh) on the basis of single tender to the contractors, without the approval of competent authority during January 2014 to August 2015. No reasons for

award on single tender in three cases were available on record. However, in one case (Mata Bala Sundri Temple Trust, Trilokpur) with estimated cost of ₹ 53.60 lakh, even the work being of urgent nature, tender was re-invited after receipt of single tender.

5.5.7 Non-completion of works in time

Out of the test checked 92 cases, the company failed to get 33 works completed in time leading to loss of potential income to the Company.

Two projects⁸ (involving 55 works) sanctioned in March 2015 by Government of India for ₹ 183.82 crore, were to be completed within two years from the date of sanction i.e. up to March 2017. However, the Company did not plan and execute the works to complete the projects in time and both the projects were still (November 2018) incomplete. Execution of these two projects have been discussed in detail in **Paragraph 5.5.8**.

(i) Loss of potential income due to delay in start of work

Against the estimated cost of ₹ 53.60 lakh Mata Bala Sundri Trust Temple, Trilokpur (Trust) released ₹ 27 lakh (December 2014) with a request to start the work of construction of clock room, shoe racks and toilet in Bala Sundri Temple on urgent basis.

The Company, due to delay in inviting tender, re-tendering, delay in taking decision against single bid received, took 22 months for awarding the work. The work was awarded (November 2015) for ₹ 42.67 lakh with scheduled completion period of six months i.e. up to May 2016. The Contractor did not start the work and the Company failed to monitor the work effectively. Although the scheduled completion period was six months but, the Baddi division of the Company took more than one year in rescinding (December 2016) the work. The Trust also demanded (December 2016) refund of ₹ 27 lakh from the Company due to non-start of the work after elapse of 23 months from release of funds which were refunded by the Company.

Thus, due to delay the Company lost the opportunity to earn potential income of ₹ 4.82 lakh as agency charges. Further, the Trust also did not entrust the Company other two works of ₹ 6.45 crore, whose preliminary estimates were already submitted by the Company to the Trust. This also resulted in loss of potential income of ₹ 58.05 lakh (at nine *per cent*) as agency charges.

(ii) Non/short levy of liquidated damages

Twenty Four works were delayed ranging between 18 days and 868 days as detailed in **Appendix 5.1** for which extensions were allowed by the Company on grounds such as rain, harvesting and festive seasons, scarcity of material, repair of plant and machinery, *etc.* As the scheduled period of completion was fixed after considering these commonly known factors and the contractor is

⁸ Pandoga and Kandrori.

responsible for arranging material for completing the work in the stipulated period. Moreover, the Company had also disapproved extension on ground of rain in case of construction of overhead tank at Kandrori.

Thus, in 24 cases ₹ 4.44 crore LD, in terms of conditions of the award, for delay in completion were not / short-levied by the Company due to extension on above grounds.

5.5.8 Execution of Kandrori and Pandoga projects

The Modified Industrial Infrastructure Upgradation Scheme (MIUS) is an innovative and latest technology scheme for upgrading infrastructure in Industrial Areas, Estates, Parks and Greenfield Projects for urban, rural and geographically isolated areas to facilitate industrialisation and employment generation.

(i) Delay in completion.

The works of Kandrori and Pandoga projects were divided in 55 sub-works, were awarded to various contractors after inviting tenders.

20 works were incomplete (March 2018) even after incurring expenditure of ₹ 103.40 crore and one work had not been awarded. Thus, both the projects were incomplete even after elapse of one year from the stipulated completion period. The reasons for delay in completion as analysed in audit are given below:

- In Kandrori project, the works were awarded during January 2016 to October 2017 i.e. after 10 to 31 months from the date of sanction of the project. Moreover, five works were awarded even after the scheduled completion date.
- In Pandoga Project, site development works were not included in the Detailed Project Report (DPR) and could have been done before starting the execution of DPR works. The Company delayed the start of works and the works were completed by December 2017 at a cost of ₹ 25.44 crore.
- DPR works of Pandoga were awarded only between May 2016 and October 2017 i.e. after 14 to 31 months of sanction of the project. Seven works under the project were awarded after the scheduled completion date of the project.

Thus, due to delay in execution of the above two projects, the intended benefits of the scheme could not be derived despite incurring an expenditure of ₹ 103.40 crore, so far (March 2018).

(ii) Excess payment of consultancy fee

The Company appointed (September 2015) Himachal Consultancy Organisation Limited (HIMCON) as consultant for overall planning of the infrastructure of the Kandrori and Pandoga projects at consultancy fee of 2.30 *per cent* of the actual cost of the project and service tax thereon. As the actual cost of the project was not ascertainable in the beginning, first installment of the fee was to be paid on the basis of estimated cost.

- The Company awarded the above works of Kandrori and Pandoga between January 2016 and October 2017 for ₹ 27.06 crore (estimated cost: ₹ 54.98 crore) and ₹ 24.34 crore (estimated cost: ₹ 45.81 crore), respectively. Since the awarded cost in both the above projects was much lower than their estimated cost, the Company should have restricted the payment of fee to the awarded amount. However, the Company, continued to make the payment on the estimated cost basis without analysing the estimated cost and cost of already awarded works, resulting in excess payment of consultancy fee of ₹ 1.04 crore and service tax of ₹ 15.12 lakh thereon between September 2015 and June 2017.
- Water & sewerage and street light works were excluded for calculation of consultancy in Kandrori whereas, similar works awarded for ₹ 5.72 crore had been included in Pandoga resulting in excess payment of consultancy charges of ₹ 12.92 lakh and service tax of ₹ 1.94 lakh thereon. This indicated lack of clarity and uniformity in payment of consultancy fee.

(iii) Avoidable expenditure on construction of road

The work at Kandrori included construction of six km road. The work of sub-base and base of the entire road of six km was completed in February 2017 and tarring of one km road awarded in March 2017 was completed in June 2017 at a cost of ₹ 40.91 lakh. Due to sub-standard work, the tarring had to be redone through another contractor.

Although as per terms and conditions⁹ of the contract, the contractor was liable to rectify the defects noticed within a year from the date of completion i.e. up to May 2018 but the Company did not invoke the condition of the contract. It neither asked the contractor to rectify the defects nor deducted / demanded ₹ 18.26 lakh from the contractor, incurred for removal of defects, due to improper execution of work.

(iv) Extra payment to the contractor

The work of construction of roads (except tarring) at Kandrori, was awarded to the contractor at 38.14 per cent below the estimated rates of HPSR, 2009. As per terms and conditions¹⁰ of the agreement, rates for the altered / additional item was to be worked out based on Himachal Pradesh Schedule of Rates (HPSR) plus / minus the percentage difference between tendered amount and awarded amount of the entire work.

The rate for an additional item (reinforced concrete NP-3 pipes) was paid based on current market rates, instead of paying as per contract provision. Thus, payment of ₹ 9.28 lakh against the admissible payment of ₹ 3.54 lakh was made to the contractor, resulting in extra payment of ₹ 5.74 lakh.

5.5.9 Avoidable expenditure

The Company signed (December 2014) Memorandum of Understandings (MoU) with Himachal Pradesh School Education Society, Department of

⁹ Clause-17 read with clause-35 of general conditions of the contract.

¹⁰ Clause 12 of general conditions of the contract.

Education, Government of Himachal Pradesh for design and construction of infrastructure in the 107 existing Schools located in various districts of Himachal Pradesh at a cost of ₹ 38.31 crore.

The MoU, *inter alia*, included construction of one school building (Government High School) at Baggi, however, the Company erroneously constructed (September 2016) the school at Baggi Tungal at a cost of ₹ 29.73 lakh.

The Department of Education pointed out the deviation and requested (July 2017) the Company to construct the school at Baggi without additional funds. Consequently, the Company had to award another work for construction of school building at Baggi for ₹ 27.05 lakh which was under progress (April 2018). Thus, the Company incurred avoidable expenditure of ₹ 29.73 lakh on construction of school at Baggi Tungal. In the enquiry conducted by the Company, it was found that the mistake was on the part of field unit as well as officers working at head office of the Company.

5.5.10 Non-ensuring the statutory obligations

During execution of deposit works the Company could not ensure its statutory obligations towards royalty, workers' welfare cess and EPF as narrated below:

(i) Inadmissible payment of goods and service tax

As per terms and conditions¹¹ of the agreements relating to works awarded to the contractors between December 2014 and August 2017, the rates were inclusive of all taxes.

Although the rates were inclusive of all the taxes, which were replaced by the Government of India subsequently with the Goods and Service Tax (GST) in July 2017. Company without adjusting the earlier taxes included in the awarded rates made payment of ₹ 1.94 crore in 17 works over and above the awarded rates to contractors towards GST during September 2017 to March 2018.

(ii) Non-deduction and deposit of Service Tax

Notification¹² (June 2012) issued by GoI, provided that under reverse charge mechanism, both the service provider and receiver were liable to deposit 50 per cent of the service tax each. As per terms and conditions of the works awarded to the contractors, rates were inclusive of all taxes.

- The Company, while releasing gross payment of ₹ 28.47 crore to the contractors for 22 works during November 2015 to June 2017, failed to deduct the service tax of ₹ 80.11 lakh (being 50 per cent of the total service tax) and deposit it with the Excise and Taxation Department.
- The Company failed to deduct and deposit service tax from the bills of a contractor¹³ during 2013-14 to 2016-17 and on receipt of notices

¹¹ Clause 26 of special conditions.

¹² 30/ 2012-ST dated 20-06-2012.

¹³ Sh. Dharmender Singh Thakur.

(January 2017 to July 2017) had to deposit ₹ 41.05 lakh (including interest of ₹ 6.58 lakh) during July 2017 from its own resources.

(iii) Irregular payment of service tax

As per the provisions of service tax, services provided to the government, a local authority or a government authority for execution of civil works were exempt¹⁴ (June 2012) from service tax. These services were, however, made taxable¹⁵ from 1 April 2015. The exemption from levy of service tax on these services was restored¹⁶ from 1 March 2016 to 31 March 2020 in respect of the contracts entered prior to 1 March 2015. The exemption continued up to the introduction of GST from 1 July 2017.

Company executed civil works of ₹ 18.22 crore during April 2016 to June 2017 relating to construction of schools, Industrial Training Institutes, veterinary hospitals, residential quarters and labour hostel etc. for various government departments, which were sanctioned prior to 1 March 2015. Though the service tax was exempt, but the Company deposited service tax of ₹ 25.76 lakh on the agency charges of ₹ 1.73 crore recovered on these works and subsequently charged it to the respective client departments, thereby, putting additional financial burden on the public exchequer.

(iv) Short deposit of workers' welfare cess

Building and Other Construction Workers' Welfare Cess Act, 1996 provided for levy¹⁷ and collection of cess at the rate of not less than one *per cent* on the cost of construction incurred by employers. Failure to pay cess would attract¹⁸ interest at the rate of two *per cent* per month.

Company did not deposit the cess of ₹ 24.41 lakh on agency charges of ₹ 24.41 crore, realised during April 2015 to December 2017, which may attract interest at the rate of two *per cent* per month.

(v) Non-ensuring deposit of EPF

The Employees' Provident Fund Scheme, 1952¹⁹ provides that it shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

Terms and conditions of the award of work stipulated that at the time of submission of each running bill, the contractor was required to submit copy of challans of deposit of EPF for the period covered under the bill along with

¹⁴ Notification no. 25/ 2012 Service tax dated 20 June 2012 of Ministry of Finance, Government of India; Entry no. 12 (a) and (c).

¹⁵ Notification no. 6/ 2015 Service tax dated 1 March 2015 of Ministry of Finance, Government of India.

¹⁶ Notification no. 9/ 2016 Service tax dated 1 March 2016 of Ministry of Finance, Government of India.

¹⁷ Section 3.

¹⁸ Section 8.

¹⁹ Para 30.

attested photocopies of the wage register of workers employed during the period.

- The Company made payment of ₹ 74.76 crore to the contractors in respect of 51 works (out of 92 works test checked) for the period September 2011 to April 2018 without obtaining EPF challan for 489 months (64 *per cent*) out of 770 months involved.
- Further, copy of wage register was not obtained from the contractors for 732 months (95 *per cent*) out of 770 months involved.
- Against ten labour deployed by the contractor on the work of “construction of road side drain and cross drainage in Kandrori” during December 2017 to March 2018, the contractor had deposited EPF for only three employees.
- In respect of the work of construction of common facility building at Peersthan, Nalagarh, in few running bills submitted by the contractor, the months of the EPF deposited were overwritten in two cases and the date of auto-generation of receipt were either blank or was three years’ prior to the month of deposit. Regional office of Employees’ Provident Fund Organisation, Shimla has also confirmed that the receipts were forged. Thus, the Company failed to ensure the compliance regarding deposit of EPF for the required number of months and the actual number of labour deployed.

5.5.11 Monitoring and Internal Control

Monitoring of deposit works is the regular observation and recording of activities taking place for effective management of the works. Internal Control is a management tool to provide reasonable assurance for efficient and effective operations, reliability of financial reporting and compliance of applicable rules, regulations and conditions of the contract. The Monitoring of progress of deposit works was not effective and internal control was also deficient as discussed below:

- The Company did not fix physical targets for deposit works. It also failed to monitor at Headquarters, the work-wise/ Division-wise progress, expenditure incurred against the estimated cost/ funds received and liability incurred from own resources. The Board of Directors (BoD) reviewed only the total value of works executed along with agency charges against the prescribed financial targets which were fixed without any basis. The timeline for activities involved in execution of work was neither fixed nor monitored. Thus, the monitoring system was inadequate and ineffective.
- Internal control system in the Company in relation to the execution of deposit works was inadequate and inefficient as it lacked a reliable system to ensure:
 - a) execution of works only after according technical sanction.
 - b) incurring expenditure on the works up to the funds received.

- c) promptness in refund of savings to respective clients after completion of the work.
- d) adherence of terms and conditions of the contract relating to payment of consultancy fee, escalation and extra item of work.
- e) adherence of delegation of powers in relation of acceptance of single tenders.
- f) deposit of EPF dues by the contractors.
- g) statutory deductions from the bills of the contractors.
- h) Internal audit and statutory audit of the Company also failed to point out the above deficiencies in internal control.

Conclusion

The Company started the execution of works without technical sanction. The financial management of the Company was not efficient and effective as it failed to restrict expenditure up to the amount of funds received and timely return savings to the respective clients. The works were not completed in time, the conditions of the contract were not adhered and failed to ensure its statutory obligations. Monitoring and internal control system was also inadequate and ineffective as the Company did not monitor the progress of works.

Recommendations

Company needs to:

- **to frame its Manual / procedures for planning, execution and monitoring;**
- **introduce and strengthen its financial management;**
- **ensure the statutory obligations;**
- **monitor the progress of works; and**
- **put in place Internal Control & Monitoring mechanism.**

Himachal Road Transport Corporation

5.6 Loss due to non-collection of Service Tax

Failure of the Management in initiating timely action for collection of service tax from the passengers through fare resulted in non-collection of service tax amounting to ₹ 1.04 crore for the period of delay. Apart from this, possibility of imposition of interest and penalty on delayed payment of service tax cannot be ruled out.

The Ministry of Finance (Department of Revenue), Government of India notified (February 2016) that transportation of passengers by air conditioned stage carriage busses is liable for service tax at the rate of six *per cent* with effect from 1 June 2016. Accordingly, service tax was to be collected by the Himachal Road Transport Corporation (Company) from the passengers travelling in its air-conditioned buses being plied on various inter / intra state

routes. The service tax so collected has to be deposited with the Central Excise & Taxation Authorities (CETA).

Audit noticed (August 2017) that the Corporate office of the Company, was not aware of the notification. On receipt of a letter in this regard from other State Transport Companies (Rajasthan and Haryana), the Corporate office of the Company directed its field units to charge the service tax from the passengers on 9 August 2016 i.e. after a delay of more than two months from the date of its applicability. Further, 17 out of 20 field units involved, delayed the implementation of the directions and continued to collect fare from the passengers without service tax between 11.08.2016 and 14.02.2017. However, Shimla Rural, Una & Hamirpur depots started charging service tax w.e.f 09.08.2016, 06.08.2016 and 07.08.2016 respectively, i.e. immediately or before issue of directions by the Corporate office of the Company. The delay in issue of directions as well as delay in implementation of directives ranged between 66 and 137 days due to which service tax of ₹ 1.04 crore could not be collected from the passengers and the Company had to bear the liability. The Company has already deposited ₹ 91.46 lakh with the CETA and ₹ 12.10 lakh was still to be deposited, which may attract interest and penalty for failure to pay service tax in time.

Thus, failure of the officers in initiating timely action for collection of service tax from the passengers through fare resulted in non-collection of service tax amounting to ₹ 1.04 crore for the period of delay.

The Management should ensure compliance of all statutory obligations and devise a system to issue all instructions in time to the field units to avoid such revenue loss in future.

The matter was reported to the Government/Management (May 2018); their reply was awaited (September 2019).

Himachal Pradesh Road & Other Infrastructure Development Corporation

5.7 Avoidable extra payment to contractor

Due to non-adherence of specifications of MoRTH & IRC without considering local requirements in all reaches / stretches in the Detailed Project Report, led to increase of 15,988.932 M³ Granular Sub Base, resulting in extra payment of ₹ 93.37 lakh to the contractor. Further, considering 20 per cent overhead rate instead of 8 per cent, ₹ 8.22 crore was paid extra to the contractor and this would increase further after completion of works.

Himachal Pradesh Road and Other Infrastructure Development Corporation (Company) was the implementing agency for the execution of works for widening and strengthening of Theog-Kotkhai-Kharapathar-Rohru road under Himachal Pradesh State Roads Project (HPSRP) being financed by International Bank for Reconstruction and Development (World Bank). The Company got the project executed through Public Works Department (PWD).

The Chief Engineer-cum-Project Director, State Road Project, Himachal Pradesh, PWD, Shimla, on behalf of State government, awarded (October 2013) the work under two separate packages²⁰ to a contractor²¹.

The Company, as per World Bank requirement, engaged M/s Louis Berger, USA (Consultant) for preparation of Detailed Project Report (DPR) for execution of this project. The Consultant prepared the DPR in March 2007 wherein the provision for Granular Sub Base (GSB) was made for 100 mm thickness in some reaches / stretches of the road, however, specification of the Ministry of Road Transport and Highways (MoRTH) published by the Indian Road Congress (IRC) and the Codes of IRC provides minimum thickness of 150 mm GSB design for traffic less than 10 Million Standard Axles (msa). The terms & conditions of the contract provided that quantities executed in excess of 125 per cent of awarded quantities will be paid at current market rates.

(A) The Company in violation of MoRTH & IRC's specification of minimum thickness of 150 mm GSB approved a DPR providing thickness of 100 mm in some reaches / stretches. Based on the DPR, the upgradation work under two separate packages²² to a contractor²³ was awarded during November 2013. Subsequently, after award of contract, the Company increased the thickness to 150 mm on the argument of reaches / stretches being snow bound and slushy resulting in extra quantity of 15,988.932 M³ GSB.

Audit observed (November 2017) that the Company, while approving DPR should have adhered to specifications of MoRTH and IRC. In addition, Company should have ensured that DPR was prepared after due consideration to local requirements in all reaches / stretches. The rates, awarded quantities, quantities increased in excess of 125 per cent of BoQ and quantities increased due to increase in thickness are as per the detail given below:

Table 5.2: Detail of rates and increase in quantities in excess of 125 per cent of Bill of Quantities

Name of package	Qty. to be executed with 100 mm thickness (M ³)	Qty. executed over and above 125 per cent due to increase in thickness from 100 mm to 150 mm (M ³)	Awarded rate per M ³ (₹)	Current market rate per M ³ (₹)	Difference in per M ³ rates (₹)	Amount (₹)
1	2	3	4	5	6 (5-4)	7 (3x6)
ICB 5-I	45,752.659	9,940.932	1,500	2,143	643	63,92,019
NCB 5-II	42,834	6,048	1,528	2,010	482	29,15,136
Total		15,988.932				93,07,155

²⁰ Theog-Kotkhai-Kharapatthar: 5/ICB-I and Kharapatthar-Hatkoti-Rohru:5/NCB-II.

²¹ M/s C&C Constructions Limited.

²² Theog- Khara Patthar: ICB 5-I: and Khara Patthar- Rohru: NCB 5-II.

²³ M/s Chadha & Chadha Constructions.

Thus, due to non-adherence of specifications of MoRTH & IRC without considering local requirements in all reaches / stretches in the Detailed Project Report, led to increase of 15,988.932 M³ Granular Sub Base, resulting in extra payment of ₹ 93.07 lakh to the contractor.

The Management while admitting the facts stated (March 2018) that the decision to increase the thickness was taken in view of the public safety and economy.

The reply was not acceptable as the minimum thickness of 150 mm specified in IRC norms for ensuring safety should have been considered while accepting the DPR and this omission, leading to extra payment of ₹ 93.37 lakh to the contractor, cannot be termed as economical.

(B) Further, for analysing the current market rates the overhead rates of eight *per cent* for road works above ₹ 50 crore and 20 *per cent* for minor bridges included in the Road Packages have been provided in the Standard Data Book for Road and Bridge Works (Data Book), published by the Ministry of Road Transport and Highways (MoRTH), Government of India.

Company, while analysing the current market rates for 1.54 lakh M³ plain cement concrete works of M-15 Grade (concrete) executed beyond 125 *per cent* of the BoQ, was to consider the overhead at the rate of eight *per cent* applicable for road works.

The Agreement quantities vis-à-vis execution made and rate allowed are tabulated below:

Table 5.3: Excess payment due to wrong application of overhead rates.

Name of package	Qty. executed beyond 125 <i>per cent</i> of the BoQ (M ³)	Awarded rate per M ³ (₹)	Current market rate with 8 <i>per cent</i> overhead per M ³ (₹)	Current market rate with 20 <i>per cent</i> overhead per M ³ (₹)	Difference in per M ³ rates (₹)	Amount (₹ in crore)
1	2	3	4	5	6=(5-4)	7=(2 x 6)
ICB 5-I	42,236.309	4,430	4,895	5,438	543	2.29
NCB 5-II	1,11,591.000	4,728	4,777	5,308	531	5.93
Total	1,53,827.309					8.22

Audit noticed (November 2017) that while analysing the rates for the quantity of concrete executed beyond 125 *per cent* of the awarded quantities, the rate of overheads have been considered at 20 *per cent* (applicable for minor bridges) instead of eight *per cent* applicable for road works. This had resulted in extra payment of ₹ 8.22 crore to the Contractor on execution of total 1.54 lakh M³ up to October 2017 and this would increase further as the work under the contracts were still under execution.

The Management in its reply stated (August 2018) that there is no provision of structural / concrete works in Road works of the Standard Data Book as such in the analysis of revised rates the overhead charges were taken as 20 *per cent* as per category-2 (Minor bridges included in the Road Packages) of Standard Data Book.

The reply is not tenable as the item (Concrete M-15) was awarded under the Road works hence the overhead rates should have been charged at the applicable rate of eight *per cent* as provided in the Standard Data Book for Road works.

The Management should ensure that DPRs are got prepared after considering applicable standards / guidelines to avoid such lapses in future and should consider fixing of responsibility for the lapse and streamline its rate analysis system to avoid such lapse in future.

The matter was reported to the Government/Management (May 2018); their reply for part-A was awaited (September 2019), however, reply for part-B was awaited only from Government.

Shimla
The

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Principal Accountant General (Audit)
Himachal Pradesh

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The

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