

## **CHAPTER-4 Execution Stage**

During course of technical examination of various contracts by CTE organisation, it was observed that, officials who are otherwise expert in their own technical field do not go through the complete contract document. During performance of the contract, their main focus seems to be on BOQ/specifications of the items. Other important contract provisions, which otherwise are essential for smooth operation of contract get ignored. The contractors/vendors tends to take advantage of the ignorance of the site staff to their benefit. Many a times major financial irregularities occur during the performance of the contract because of the officials are not thorough with the contract conditions.

The deficiencies in this stage are categorized as below-

- Compliance of agreement conditions
- Making payments
- Ensuring quality
- Timely completion

### **Compliance of Contract Conditions**

#### **Case 1 (04-WT-05)**

As per contract condition, in case of a housing project costing Rs.15 crores, water for construction was to be arranged by the contractor. They were also supposed to pay 'royalty' for the surplus earth generated from excavation. The PSU provided the water and did not deduct the royalty from the contractor's bill. The contractor was unduly benefited by Rs. 4 Lacs on this account.

#### **Case 2 (04-WT-05)**

As per the contract condition, if an item is repeated in different sub-heads, the minimum rates of all sub-heads will be paid for that particular item. However, in violation of this contract condition, different rates were paid for the same item in different sub-heads, which resulted in overpayment of Rs.4 lacs. Also, due to delay in construction the PSU could not avail rebate from local body.

#### **Case 3 (04-WT-66)**

In case of main plant work of power project, costing Rs.77 crores, there were express provision for deployment of certain equipment, machinery and

manpower. This was also highlighted during pre bid discussion; obviously the organization had stipulated these requirements to facilitate speedy completion of work. The contractor deployed less number of machinery manpower etc. and saved in investment. This resulted inordinate delay. The organization neither took any action against contractor for non-deployment of machinery etc. nor for inordinate delay.

**Case 4 (04-WT-66) general**

As per the condition of contract, reconciliation of material issued by dept. was to be done at various stages of works, but it was found the same was not being done. In absence of stage wise reconciliation of material, the pilferage of material by contractor / Dept. cannot be ruled out.

**Case 5 (06-SH-13)**

In a power project costing Rs. 220 crores, 5% interest free advance was provided in the contract agreement. Another interest free advance of Rs.11 crores was allowed to the contractor without any contract provision. Thus, undue financial benefit was extended to the contractor.

**Case 6 (06-SH-13)**

As per the special condition of the contract for a power project, the service tax was the liability of the contractor; still it was being reimbursed to the contractor, causing undue financial benefit to the contractor.

**Case 7 (06-ET-61)**

In one of the power project, work contract tax was being recovered @ 2% of cost of a few materials used in the work instead of 2% of the gross value of work done. This was observed during intensive examination of tail race diversion work costing Rs.26 crores.

**Case 8 (06-ET-61)**

In case of two hydro power projects, where it was observed that safety related facilities like medical care, ventilation, safety sign board, helmets etc. were not provided by the contractor. This shows the apathy of contractors as well as of the site staff towards the work force, working in accident prone area. The site staff not only gave undue benefit to the contractor but also were callous towards labour.

**Case 9(06-ET-72)**

Advance of Rs.20 crores @ 10% interest was paid to the contractor without agreement provision. This was observed in case of a 520MW hydro electric project.

**Case 10(05-ET-50)**

In power transmission line project costing appx. Rs.5000 crores, reconciliation statement of owner supplied materials was not at all being prepared in any of the contract. Whereas, it should have been done at every running bill stage to arrest any possibility pilferages.

**Case 11(05-ET-80)**

In a power project, Effluent Water Utilizations work was nearing completion, still performance guaranteed test, walk ways, approach road, manhole covers, training to the departmental engineers, etc. were not provided.

**Case 12(05-SH-75)**

In one of the power project, involving piling work, tools and plants deployed at site were not sufficient even when it was specifically mentioned at the time of award of work and duly confirmed during the pre award meeting. As the overall progress of work is related and highly dependent on the deployment of necessary tools, plants and piling rigs, any deficiency in the deployment has resulted in the delay of completion of work in some of the projects inspected.

**Case 13(General)**

In number of cases it has been observed that plants/equipments/machinery are not being deployed as per contract stipulations. Certain number and type of machinery are stipulated in the contract to achieve desired speed of construction as well as quality standards. By allowing the contractor to deploy less number of equipment of required type, the organization not only extends undue financial benefit to the contractor but also loses in terms of speed and quality.

In case of two hydro power project, it was seen that only one batching plant was deployed against two required. The contractor was not able to produce required quantity of concrete and consequently work was delayed. Similarly, in another case, batching plant was not installed at all even after lapse of 15 months from the date of start. As per the contract condition, work was to be executed using design mix concrete produced with batching plant, however concrete work was being executed at site using volumetric method. It is pertinent to mention that design mix method of concrete is more accurate than the volumetric method. Thus by not deploying batching plant, the contractor not only saved money but also compromised the quality.

**Case 14(General)**

In number of cases, it was observed that contractor's are either not taking various insurance policies at all or taking these policies for part period or for part value of project. This not only defeats the very purpose of stipulating these insurance policies, but also results in undue financial gain to the contractor. CTEO's inspections have resulted into huge recoveries on this account. During one of the CTEO's inspections, CVO of one organization was asked to verify the status of insurance policies in other running contract. In turn, CVO reported the recovery of Rs.1.5 crores. This shows that the officials are not ensuring that required policies are taken for complete duration.

### **Case 15(VR1)**

In one case, the LOI was issued on 3.12.2004 and the successful bidder was required to furnish performance guarantee within 30 days of LOI and it was further stipulated that if the successful bidder failed to submit the contract performance guarantee in the prescribed form within 30 calendar days after date of LOI, then the bid guarantee amount of the successful bidder would be forfeited by the purchaser as LD. In this case, although the performance guarantee was submitted by the successful bidder after 62 days of issue of LOI no LD was imposed as stipulated in the tender document, which amounts to extending a financial favour to the contractor.

### **Case 15(VR2)**

In a particular power PSU, the major items were required to be type tested by the contractor before supplying to the site. But it was found that type tests were waived and as a result, type test charges, as quoted by the bidder, were not paid to the contractor. Such incidence of waiving contract conditions may not only have bearing on the quality aspects but also have financial bearing. This is not a transparent way of handling the contracts as the contractors may have direct or indirect savings by such waivers.

### **Case 16(VR3)**

In some of the cases, the responsibilities of supervision are given to another PSU company by the principal PSU. In one such case, it was found that the supervising PSU was not having any control on the execution of the work and was merely signing the papers at the behest of the principal PSU. While examining the work on site, the quality of work was found to be of very low grade, which proved that there was no supervision at all from the agency appointed for the purpose.

## **Payment to the Contractors**

The deficiencies observed in payments made to the contractors are concerned can be categorized into as follows-

- **Mobilisation Advance and its recovery-**

The basic purpose of Mobilisation advance is to extend financial assistance within the terms of contract to the contractor to mobilize the man and material resources for timely and smooth take off of the project or procurement of equipment material or other services contract. But, the Mobilisation Advance, especially the interest free advance was being misused in absence of either necessary safeguards or in absence of implementation of these safeguards provided in the contracts. Thus, the Mobilisation Advance so paid was prone to misuse by the contractors in building their own capital or for the purpose other than the one for which it was disbursed. In fact, the grant of interest free advance was proving to be counter-productive. In view of the history of its misuse, Commission vide its Circular No.NU/POL/19 dated 8<sup>th</sup> December 1997 banned the provision of interest free Mobilisation. However, recently in view of representations from various organization, Commission has reviewed the earlier instructions and allowed the organizations to stipulate interest free advance with elaborate mechanism for safeguards against its misuse vide circular No.10/4/07 issued vide letter No.4CC-1-CTE-2 dated 10.04.2007. More importantly the BGs taken in lieu of Mobilisation Advance need to be properly examined within respect to the acceptable format and any condition deterrent to the Govt.'s interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/encashment of BGs also need to be taken so as to protect the Govt. interest.

- **Duplicate payment:**

Some times, duplicate payment for the same activity is made under two different items.

- **Recoveries for statutory taxes/duties:**

Recoveries for statutory taxes/duties like Work Contract Tax ,Royalty for various construction materials not made as per contract condition.

- **Reimbursements:**

Reimbursement of service tax, excise duty etc. is done without obtaining the actual proof of depositing the same with authorities concerned. In such situation there is possibility of excess reimbursement.

- **Payments made for work not done:**

Contractors are paid for even for that part of the work which was not done by them.

- **Escalation paid more than admissible:**

Some of the contracts provide escalation clause, with detailed formula in order to compensate the contractors for increase in the material cost during the contract period. It is observed in certain cases that formula is not applied correctly inadmissible payment.

- **Hire charges not deducted:**

Some times in the interest of work the organisations allow their machinery to be used by the contractor, even though there is no provision in the contract. In such cases, if the hire charges are not deducted, contractors get unduly benefited.

A few examples regarding irregularities in payments are as below-

**Case 1(04-NH-73)**

The work of a housing project costing Rs.60 crores was to be executed with design mix concrete using the ad-mixture. The design mix was to be submitted by the contractor. It was observed that the contractor was executing the work with some old mix design without use of ad-mixtures. On account of this the contractor saved approx. Rs. 1 lakh.

In fact proper mix design using admixtures should have been insisted from the contractor before start of the work.

**Case 2(06-ET-05)**

In case of one main plant civil work of a power project, escalation payment was being done on the gross value of work done, without deducting secured advance. Thus, the contractor received escalation payment for the material purchased earlier.

**Case 3 (06-ET-05)**

Total excavated quantity of earth was considered for disposal under extra lead without deducting for back-fill quantity. Thus, payment was made even for the quantity not disposed. This was observed in the work of RCC chimney for a power project.

**Case 4(06-ET-05)**

During our sample inspections in year 2005,one organization, executing the works worth Rs.5000 crores was reimbursing the excise duty to the

contractors to the tune of Rs.800 Crores without verifying the excise duty challans. Even after the lapse of one and half year, the organization is not able to submit the reconciled statement of reimbursement of excise duty received by the contractor and the actual excise duty paid by the contractor.

Since the amount involved on this account is huge, the possibility of excess reimbursement to the tune of few crores of rupees can not be ruled out.

**Case 5 (05-ET-34)**

Special advance of Rs. 4.69 crores was given to the contractor including direct payment to sub supplier without any agreement provision in a power transmission line project. In the same project Rs 64.7 lacs were reimbursed to agency towards the amount of ED & CST for the part supply made through the sub contractor/ sub vendor, which was not payable as per agreement.

**Case 6(06-ET-45)**

A few material like anti twist pilot wire, three sheave acriatrollers and dynamometer were issued to the contractor executing power transmission line. Without provision in the agreement. The organization did not even recover any hire charges. Thus the contractor was unduly benefited.

**Case 7(06-ET-45)**

Central Sales tax was not being deducted from supply bills of the agency for the transmission line. The contractor had not submitted any documentary evidence of depositing sales tax with the concerned authorities.

**Case 8(05-ET-80)**

In a thermal power project, escalation payment was made to the contractor even on owner issue material like cement and steel.

**Case 9(05-ET-33)**

Work contract tax on survey part of the work was not being deducted in a power transmission contracts. The organisation confirmed recovery of Rs.16 lacs on this account.

**Case 10(06-ET-05)**

In case of a thermal power expansion project, concrete mix was designed with particular cement content, but at the time of approval of deign mix, the cement content was increased arbitrarily. Since, the cement was to be

supplied free of cost by the department, it ultimately resulted in infructuous expenditure to the tune several lacs. The possibility of pilferage of cement can not be ruled out.

**Case 11(06-ET-61)**

Testing charges for various mandatory test conducted by department in their laboratory for their 'Tail Race Diversion' work were not being recovered from the contractor as per the agreement provision.

Case (GEC

**Case 12(05-SH-62)**

In one of the power project, the prices taken for escalation were on higher side resulting in an overpayment of Rs. 9 lakhs (appx.).

**Case 13 (07-SH-13)**

A power sector PSU allowed Rs.4 crores interest free advance during the execution of the work without any contract condition on the ground of rise in the steel prices. It will be worth mentioning here that here was a specific escalation clause for steel and contractor was being adequately compensated for rise in the steel prices, so the action of the organization virtually resulted in undue financial benefit to the contractor. If the rate of interest on this extra contractual advance payment is considered same as on the mobilization advance stipulated in the contract agreement, this undue benefit will amount to almost Rs.50 lakhs.

In the same power project before award of work the L-1 firm confirmed that the mega project concessions will be passed on to the PSU. However, till the inspection, no mega project concessions were passed on to the PSU by the L-1 firm. Rather a proposal was in the process for payment of 16% of the total amount of mega project concessions to the L-1 firm as a fee for the consultant who will be appointed by the L-1 firm for availing these mega project concessions. This action of the PSU of allowing 16% of the amount of these concessions to the L-1 firm does not appear to be in order as before placing the award letter the PSU categorically rejected the demand of the L-1 firm on this account. The total Mega Project Concessions were estimated

approximately Rs.20 crores at the initial stages of work. Thus, in violation of the contract, undue financial benefit is being extended to the contractor to the tune of Rs.3 crores (i.e. 16% of Rs.20 crores).

### **Quality**

One of the cardinal principles of public procurement is to procure works or goods or services of specified quality. For this purpose, detailed quality standards are stipulated in the contracts. Any compromise in the quality will defeat the very purpose of stipulating such elaborate quality standards.

#### **Case 1(06-SH-69)**

As per the item nomenclature in a contract for a thermal power project, surface cleaning and preparation on steel structural members was to be done with wire brushing or mechanical tools depending upon the condition of surface. But, at site surface cleaning and preparation was being done only with wire-brush, whereas certain members of structural steel required cleaning with mechanical tools because of scaling. In the same project, honey-combing was observed in certain locations in beam and slab.

#### **Case 2(06-ET-05)**

Huge quantity of unsuitable sand was found lying at the batching plant sites of various packages in a power project. Such unsuitable material in general should have been removed immediately from the site so that the contractor is not tempted to use them. In this case use of this piled up rejected material by the contractor cannot be ruled out.

#### **Case 3(06-ET-05)**

During intensive examination of one cooling tower working costing Rs. 62 crores it was observed that the field test laboratory set up by the contractor was not operational. Thus the very purpose of setting up laboratory for quality assurance was defeated. It is not out of way to mention that the contractor had got this work on nomination basis.

#### **Case 4(05-SH62/64)**

In a power project, the thickness of paint over structural steel members was found less than the required. The painting was a high value activity and any deficiency in painting thickness will obviously adversely affect the overall life of steel structure beside undue financial benefit to the contractor.

In the same project, honeycombing, bulging and undulations were observed on concrete surface in various locations, even the repair was done in a shabby manner and with a weak mortar.

**Case 5(05-ET-80)**

In number of projects, RCC work with design mix concrete was being executed by volumetric method. The contractors were not only saving cement & hire charges of batching plant but also were compromising on quality of work.

**Case 6(07-SH-13)**

In a Nuclear power project costing Rs. 260 crores the quality of finishing work was found to be poor. Even in the critical areas where very stringent quality requirements was set out, inferior finish, including was observed at number of locations. Running cracks in the pavement were also observed.

**Case 7(05-SH-06)**

In a RR stone masonry drain work of a Nuclear power project bond stones were not provided at all, which are necessary for the stability of the stone work. Similarly the joints in the stone masonry were observed more than the maximum permissible size of the joints, which is also indicative of poor quality of construction.

**Case 8(VR1)**

In one case, it was found that while dispatching the material from contractor's stores, the items, which were earlier rejected, deformed and rusted, were mixed with the other items ready for dispatch to erection site. It was only during CTE's inspection that these items were pinpointed and were segregated from the other items before sending the same to the site. Such lapses prove that supervision at the time of execution is not given due importance by the PSUs particularly when the executing agency is another PSU.

**Mandatory Tests**

The contract documents stipulate mandatory tests for ensuring that the material represented by the sample conform to desired quality standard. It is observed that the supervisory staff does not ensure that the materials are tested at proper frequency. This not only defeats the objective of mandatory tests but also gives opportunity to the contractor to bring sub-standard materials and save on testing charges.

**Time Overrun**

While examining the correspondence files of some power projects, it was observed that many projects have been unduly delayed due to contractor's fault such as non deployment of adequate plant & machinery, technical staff, material, labour etc. However, the organizations were found to have taken no Action against the contractor in terms of the agreement. In some projects, it was further observed that 'Extension of Time' had been granted without claiming compensation for 'Liquidated Damages', ignoring all such correspondence that implicate the contractor.

**A few check points are suggested to prevent above deficiencies-**

- Match tender document with agreement
- Ensure that agreement is signed & sealed properly in time.
- Verify bank guarantees.
- Watch deviations, especially in abnormally high rated and high value items.
- Ensure recoveries as per contract.
- Reimburse taxes and duties, if applicable, only on the production of relevant document.
- Carry out mandatory tests.
- Ensure compliance of conditions regarding licensees, insurance policies and deployment of technical staff.
- Maintain proper record of hindrance.