FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE

ON

PUBLIC UNDERTAKINGS
(2016-19)

FIFTY NINTH REPORT

(Presented on 24.01.2018)

SECRETARIAT OF THE KERALA LEGISLATURE

THIRUVANANTHAPURAM

2018

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On

The action taken by Government on the Recommendations contained in the Forty Eighth Report of the Committee on Public Undertaking (2014-16) relating to Kerala State Electricity Board, based on the Report of the Comptroller and Auditor General of India for the year ended 31st March 2007 (Commercial)

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COMMITTEE ON PUBLIC UNDERTAKINGS(2016-2019)

COMPOSITION

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Shri. Mathewkutty. G., Joint Secretary.

Shri. P. B. Suresh Kumar, Deputy Secretary.

Smt. Deepa.V., Under Secretary.

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INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorised by the Committee to present the Report on their behalf, present this Fifty Ninth Report on the action Taken by Government on the Recommendations contained in the Forty Eighth Report of the Committee on Public Undertakings (2014-16) relating to the Kerala State Electricity Board based on the Reports of the Comptroller and Auditor General of India for the year ended 31 March, 2007 (Commercial).

The Statement of Action Taken by the Government included in this Report was considered by the Committee constituted for the year (2016-19) in its meetings held on 30.11.2016 and 17.07.2017.

This report was considered and approved by the Committee at its meeting held on 17.01.2018.

The Committee place on record its appreciation for the assistance rendered to them by the Accountant General (Audit), Kerala during the examination of the Action Taken Statements included in this Report.

C.Divakaran

Chairman,

Committee on Public Undertakings.

Thiruvananthapuram,

17.01.2018.

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REPORT

This report deals with the action taken by Government on the recommendations contained in the Forty Eighth report of the Committee on Public Undertakings (2014-16) relating to Kerala State Electricity Board based on the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2007(Commercial).

The Forty Eighth Report of the Committee on Public Undertakings(2014-16) was presented to the House on 30th June 2014. The Report contained 4 recommendations in Para numbers 11, 12, 21 and 22 relating to Kerala State Electricity Board under Power Department and the Government furnished Action Taken Statements to all of them. The action taken statement on para Nos. 21 & 22 was received on 09.06.2016 and that of Para Nos. 11 & 12 on 23.06.2017. The Committee(2016-19) considered the Action Taken Statements furnished by the Government on Para Nos. 21 & 22 at its meeting held on 30.11.2016 and Para Nos. 11 & 12 on 17.07.2017.

The Committee accepted the reply to the recommendation in Para No.11 without any remarks. This recommendation and the reply furnished by the Government from Chapter I of the Report.

The Committee accepted the replies to the recommendations in Para Nos. 12, 21 and 22 with remarks. These recommendations, the replies furnished by the Government and the remarks of the Committee form Chapter II of the Report.

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CHAPTER - I

REPLIES FURNISHED BY THE GOVERNMENT RECOMMENDATIONS OF THE COMMITTEE WHICH HAS BEEN ACCEPTED BY THE COMMITTEE WITHOUT REMARKS

Sl. No.	Para No.	Department Concerned	Conclusions/Recommendations	Action Taken by the Government
(1)	(2)	(3)	(4)	(5)
1	11	Power	The Committee finds that the Board's deviation from the tendered quantity and making counter offer after finalisation of bid resulted in the non-recovery of cost of ₹74.71 lakh from MSEL, being price difference towards risk and cost purchase of two lakh sets of two line cross arms. The Committee notices that when private companies were given inadmissible level of forebearing towards the award of work, tenders from Government owned PSUs were rejected due to stringent conditions laid down by the Board. Therefore the Committee recommends that urgent steps should be taken to formulate specific guidelines for inviting tenders, their evaluation and award of work.	As per the B.O.No.3115/2004 (CE/TCM/Genl/(2004-05) dated 08.12.2004, two part tenders on firm price basis were invited for the supply of 2 lakh sets of 2 Line Cross Arms with CBN vide tender No.CE (D-N)/35/2005-06 dated 02.06.2005. Five bidders were pre qualified and price bids were opened on 03.09.2005. M/s, Mangal Steel Enterprises Limited (MSEL), Howrah had offered the lowest rate i.e. ₹119.98 pet set. Since the rate offered by the firm found competitive and as there was requirement of 4,76,450 sets of 2 Line Cross Arms for Northern Region for the year 2005-06 (including 2,26,756 Sets for RGGVY works and 594 sets for the Chief Engineer (T-N) and considering the supply from C M Division Pallom) the Board accorded sanction to place purchase order with M/s MSEL for 4

(1)	(2)	(3)	(4)	(5)
			The the Committee remarks that the Boards anticipation to procure 2 lakh sets of two line cross arms from its own manufacturing units proved to be a miscalculation which in turn led the Board to deviate from the original tendered quantity. The Board had to pay a hefty price for this injudicious decision. The Committee recommends that the Board should adhere to the tender condition and should not deviate from the terms and conditions of contract agreements in its future dealings.	lakh sets of 2 Line Cross Arms with CBN @ ₹119.98 per Set vide B.O. (FB)NO.3436/2005 (TS5/Prch-2 line Xarms/05-06) dated 07.12.2005. Accordingly purchase order for the supply of 4 lakh sets of 2 Line Cross Arms with CBN was placed with M/s MSEL vide PO No.53/2005-06 dated 20.12.2005. This is in good faith and for the best interest of the Board for purchasing the item at a very low rate which would have been financially beneficial to the Board. But the firm had not executed the contract agreement. Though the price bids were opened on 03.09.2005, the firm vide letter dated 23.12.2005, informed that there was a serious mistake in their quoted rate and had requested for enhancement of quoted rate and if this is not acceptable, they are withdrawing their offer. If the deviation in tendered quantity was the matter of concern, they should have informed that they could supply only 2 lakh sets at their quoted rate for which they had submitted the bid and executed bounden agreement, eventhough the purchase order quantity was 4 lakh sets. Instead the

(1)	(2)	(3)	(4)	(5)
				firm informed that they had made a serious mistake in their quote and they could accept the order only if price enhancement is accepted by the Board. From this it is understood that the firm had no intention to supply the material irrespective of the quantity ordered. Here it may please be noted that eventhough the price bids were opened on 03.09.2005, the firm had intimated their inability to supply the item at their quoted rate only on 23.12.2005. Since the reason for withdrawing their tender was the mistake in their quote, they could have informed the fact on the next day of submission of bid. Instead they had waited till the date of issue of purchase order, thereby disrupting the purchase plan of the Board. This had led to loss of nearly four months in addition to financial loss to the Board. So by invoking the terms of the contract by M/s MSEL, the Board was forced to procure the material from the 2nd lowest tenderer at the risk and cost of M/s MSEL., in view of the fact that the materials were urgently required to complete the targeted works.

(1)	(2)	(3)	(4)	(5)
				The Purchase Committee meeting held on 18.01.2006, after extensive deliberations decided to authorize Chief Engineer (Distribution-North) to get the revised offer from M/s MSEL. The revised rate thus obtained (i.e. ₹161.63 per set) was higher than that of the second lowest bidder. M/s Ceebuild Company Private Limited (CCPL). As such the Board had taken steps to ascertain that the rate quoted by the second lowest bidder was reasonable. Accordingly Board accorded sanction to place purchase order with M/s CCPL., Kolkatha for the supply of 4 lakh sets of 2 Line Cross Arms with CBN at the risk and cost of M/s.MSEL vide B.O.(FB) No.602/2006 (PS5/Purchase-2 Line X arm) 05-06 dated 27.02.2006. Purchase order was issued to M/s CCPL., Kolkatha, the second lowest bidder @ the quoted rate of ₹159.84 pet set for 4 lakh Sets of 2 Line Cross Arms with CBN which was subsequently reduced to 2 lakh sets

(1)	(2)	(3)	(4)	(5)
				based on the firm's request and ratified by the Board vide proceedings of the Board meeting dated 29.06.2006. The Board also decided to black list M/s.MSEL., EMD amounting to ₹5 lakhs remitted by the firm was also forfeited after obtaining remarks from Legal Advisor of the Board, since the withdrawal of the bid was before the expiry of the firm period. Also intimated the firm to remit the balance risk and cost amount of ₹74.72 lakhs. Even though the Board had deviated from the tendered quantity, M/s.MSEL had withdrawn their tender on their own reason i.e., as per their letter dated 23.12.2005, the reason for withdrawal of their bid was the mistake in their quoted rate and not the deviation from the tendered quantity. As such the Board is not at all responsible for the withdrawal of their bid. Hence they had to remit the Risk & Cost amount proportionate to the non supply of 2 lakhs sets i.e. `74.72 lakhs. Since

(1)	(2)	(3)	(4)	(5)
				they had not remitted the said amount revenue recovery action was initiated for realizing the balance risk and cost amount. In view of the above facts it is to be noted that the decision of the Board to deviate from the tendered quantity and making counter offer after finalization of bid has not resulted in non recovery of risk and cost of ₹74.72 lakh from M/s MSEL, as this is not the reason put forwared by the firm while withdrawing their bid. Also please note that the risk and cost is calculated only for the non supply of ₹ 2 lakh sets only, being the quantity which the firm was bound to supply as per the tender. Consequent to the recovery of EMD, M/s MSEL challenged the same in the Hon'ble sub Court, Kozhikode. Now as per the judgment dated 31.03.2015 of the Hon'ble Sub Court, Kozhikode, the suit decreed in favour of M/s MSEL and ordered the Board to relase the Earnest Money Deposit with interest @ 12% from the date of suit till realization along with cost.

(1)	(2)	(3)	(4)	(5)
				The Board ordered for the compliance of the judgment of the Hon'ble Sub Court, Kozhikode vide Board order B.O.D (F) No. 2667/2015 (LC.1/6845/2009 dated 26.10.2005. Accordingly an amount of ₹9,73,754/- was paid from the office of the Chief Engineer (Distribution North) on 07.12.2015.

CHAPTER – II

REPLIES FURNISHED BY THE GOVERNMENT RECOMMENDATIONS OF THE COMMITTEE WHICH HAS BEEN ACCEPTED BY THE COMMITTEE WITH REMARKS

SL No	Para No.	Department concerned	Conclusions/Recommendations	Action taken by the Government
1	2	3	4	5
1	12	Power	The committee further recommends that the Board should fix a moderate amount as EMD and should strictly exercise price variation formula regardless of the duration of supply of meterials. The Committee also recommends that urgent steps should be taken to speed up the proceedings of RR action to recover the amount of ₹74.72 lakh, which was the price difference towards risk and cost purchase of materials.	For major items like ACSR conductors. Distribution & Power Transformers. XLPE Cables, Towers, GI /Stay Wires, PSC poles etc., price variation formula is incorporated in the tenders floated by the board. Also the rate of EMD has been modified vide BO(DB) No.589/ 2014(SCM/TA.41/GI/13-14) dated 04.03.2014.

Remarks:- The committee wants to know the reason for filing appeal against High Court's verdict even-though the vide legal rights and also the reason for stopping the procedure for revenue recovery.

2	21	Power	The committee finds that the failure of the Board to indentify and include connecting rod Bearing shell, one of the essential spare part required for scheduled maintenance of diesel generating unit, in the list of free spares points to the inefficiency, laxity and lack of technical knowledge of officials of K.S.E.B. As per the agreement, the firm SEMT was bound to supply all spares for Scheduled maintance free of cost and hence it was breach of contract to demand payment for 34 bearing shells. The injudicious decision of the Board to release payment towards 34 bearing shells, which the firm SEMT claimed against pending payment to another firm for extra supervision charges, resulted in avoidable loss of ₹33.3 lakh. The committee observes that it is unbecoming on the part of the Board to yeild to SEMT's inadmissible claim of ₹33.31 lakh. The Committee also urges that it should be furnished with details about the linking of CDE's claim for supervision charges of ₹1.58 crore with SEMT's claim for payment of free spares.	<u>Linking of CDE's Claim for supervision charges of Rs. 1.58 Crore with SEMT's claim for payment of free spares</u> K.S.E.B. has executed an agreement with M/s SEMT Pielstick, France for the supply, transportation erection supervision, testing and commissioning of equipments for 100 MW Diesel Power Plant vide agreement No, 71/93-94 dated 16.12.1993. Another Agreement (Agreement No 72/93-94 dated 16.12.1993) was executed with CDE (Centaral Diesel Export) France for the supply of indigenous equipments, transportation, erection supervision and commissioning of the equipments. The two agreements are mutually connected as explained below. As per clause No.2 of the contract agreement No. 71/93-94, it has been agreed between the purchase (KSEB) and contractor (M/s SEMT Pielstick) that the local supplies and services associated with the scope as defined in the specification except transport, erection, supervision and commissioning shall be supplied and performed under a separate contact between the purchaser and M/s CDE. This contract and the separate contract between KSEB and CDE shall together constitute the overall responsibility of SEMT Pielstick for the project to ensure the

				compatibility of design, manufacture and operation concerning the complete power plant supply according to the provision of specification. It is also agreed that any breach under the contract by SEMT pielstick shall automatically be deemed to be a breach of separate contract with CDE France, and such breach or the occurrence in the contract with SEMT shall not automatically relieve SEMT Pielstick from any responsibility under the separate contract with CDE France in the agreement No.72/93-94 entered into between KSEB and CDE there is mention about the agreement No. 71/93-94 agreed between KSEB and SEMT Pielstick. Mr.A.OBIS signed the agreement for SEMT Pielstick as well as for CDE France. From the above, it is clear that the responsibility of proper completion of the project is that of M/s SEMT Pielstick and they are responsible for any lapse in the performance of M/s CDE. Hence the claim of M/s SEMT for the amount due to M/s CDE is not against agreement and the payment made to SEMT Pielstick is justifiable.
Remarks :- The Committee opines that the reply is not satisfactory and expresses its displeasure over the undue delay in furnishing the same.				
3	22	Power	The Committee finds that the Board had failed in conducting proper feasibility studies and	**Report on the Price Variation clause on Contract Agreements.** A contractor has to consider the

				utilising technical expertise effectively before executing contract agreement. Therefore the Committee recommends that the Board should conduct a detailed study about various aspects of a project before venturing into it. The Committee also directs that urgent steps should be taken to study the merits and demerits in exercising price variation clause in contract agreements and intimate the committee about it at the earliest.	following risks while arriving at the price at which he can carry out a contract work within the contract period. 1. The risk due to variations in the cost of raw materials 2. The risk due to variations in the cost of labour 3. The risk due to variations in the exchange rate if the contract involves imported supplies and labour. Contracts can be of two types viz. Firm price contract and contract with a price variation clause. **1.Firm price contracts** While quoting for contracts with firm prices, the contractor calculates the input cost of the material and labour involved for the completion of the contract. He then adds his expected profit to this amount to arrive at his quote for the contract. Here, if the period of contract is longer, say for example 5 years, he will

have to extrapolate the cost of materials and labour for the coming five years to calculate his input cost. This shall be based on his best judgment about the future costs involved.

The estimate prepared by an organization/company is based on the prevailing rate at the time of estimate preparation. The contractor has made the quote after considering the price escalation for the contract period. Naturally, the amount quoted by a contractor will be higher than the estimate amount. Hence for awarding the contract by an organization like K.S.E.B. Limited, sanction from higher authorities, as per the delegation of powers is to be obtained before awarding the contract, which may cause time delay.

In firm price contracts, if the price of an item gone up drastically during the contract period than anticipated, the contractor will suffer and the

advantage goes to the company who entrust the contract. In this case there will be huge loss to the contractor which will affect the cash flow and ultimately the Project completion will be affected. In the other case, if the price decrease drastically, the looser will be company and the gainer will be the contractor. For example, the recent unexpected price reduction in crude oil and petroleum products, the gainer is the contractor. Similarly, due to the unexpected variation in exchange rate of rupees against the dollar during the past years, the advantages benefit the employer.

2.Contracts with price variation clause

The Contractor quotes an amount based on the market conditions at the time of quoting. Mutually agreed price variation formulae shall be used to arrive at the amount to be paid when the contract is completed. Hence

the price quoted shall be based on the input cost of raw materials and labour as on the date of tender. The quoted amount is deemed to be related to prices of raw materials and various indices like average consumer price index for industrial works etc. In case of any variation in these prices and index numbers, the price payable shall be subject to adjustment, up or down in accordance with the agreed price variation formula. Thus the risk taken by the contractor is comparatively less.

A properly drafted and operated Price Variation Clause can very effectively address the risk of speculation in the rise of various components of construction costs. Therefore, the bids in a tender which provide for such a Price Variation Clause shall be evaluated based on current prices without any reference to rise or fall in prices later on when the contract is being executed. It is

				concluded that, for a long term contract, the price variation clause reduce the risk factor due to price escalation of various components during the execution period and protect the interest of both the employer and contractor to a larger extent.

Remarks : The Committee opines that the reply is not satisfactory and expresses its displeasure over not conducting feasibility study with technical experts before signing the contract. The Committee also wants to know whether the feasibility study is currently carrying out.

Thiruvananthapuram,
17.01.2018

C.DIVAKARAN,
Chairman,
Committee on Public Undertakings.