

Audit Inspection Report on the account of Executive Engineer, Secondary Works Division Dehradun for the period from 04/2015 to 03/2016 was carried out in exercise of the power conferred by section 19 of the C &AG, DPC Act 1971 read with section 143 of the Companies Act 2013. The transaction audit was conducted by Shri Amit Kumar Mishra, Asstt. Audit Officer and Shri A.P.Singh, Asstt. Audit Officer under the partial supervision of Shri Mukesh Kumar, Sr. Audit Officer during the period from 15-06-2016 to 25-06-2016.

The inspection report has been prepared on the basis of information provided by the Executive Engineer, Secondary Works Division, Dehradun. The Office of the Accountant General (Audit), Uttarakhand, Dehradun will not be responsible for any incorrect information and information not made available to audit.

### **Part- I**

#### **(A) Introductory:-**

The last audit of the division was conducted by Shri Mukesh Kumar Asstt. Audit Officer and Shri Amit Kumar Mishra Asstt. Audit Officer under the partial supervision of Shri O.P.S. Yadav, Sr. Audit Officer covering the period up to 06/2007 to 01/2008. During the present audit, accounts and records of the Division for the period from 02/2008 to 03/2016 were generally examined.

The following Officers/Officials held the charge of the Division

1. Shri Mohit Joshi, Executive Engineer since last audit to 19.01.2009.
2. Shri V.S.Panwar, Executive Engineer 19.01.2009 to 23.06.2011
3. Shri Amit Anand Executive Engineer 23.06.2011 to 20.10.2011
4. Shri D.S.Khati, Executive Engineer 21.10.2011 to 26.08.2013
5. Shri Rahul Jain Executive Engineer 27.08.2013 to 31.10.2013
6. Shri Yudhveer Singh Executive Engineer 01.11.2013 to 22.06.2015
7. Shri Ankit Jain Executive Engineer 23.06.2015 to 31.03.2016
8. Shri Sanjeev Kumar, held the charge of Divisional Accountant. since last audit 25.08.2012
9. Shri Y.S.Payal held the charge of Divisional Accountant since 26.08.2012 to 31.03.2016.

#### **(B) Outstanding paras of pervious AIRs:-**

Sl. No.	Period	Part II A	Part II B
1.	11/2002 to 12/2004	-	1,2,3,4
2.	01/2005 to 06/2006	-	1,2,3,4
3.	07/2006 to 05/2007	-	1,2,3,4
4.	06/2007 to 01/2008	1	1,2

**(C) Persistent Irregularities:** -----Nil-----

**(D) Record not put up** -----Nil-----

## Part-IIA

### Para1: Non deduction of building and other construction workers welfare cess

As per provision of Building & Other Construction Workers' Welfare cess Act, 1996, UPCL has to collect one percent cess on cost of construction and deposit the same through bank draft in name of Labour Commissioner/Secretary, Uttarakhand Bhawan and other construction labour welfare board, Shram Bhawan, Halwani. In this regard a letter from Labour Commissioner/Secretary, Haldwani dated 15.06.2012 was written to Managing Director UPCL.

During scrutiny of agreements and its related payment vouchers, it was observed that labour welfare cess equivalent to one percent of cost of construction amounting to ` 15.74 lakh was not deducted from the bill of various contractors which is detailed below:

(Amt. in `)

Agreement No.	Contractor	Cost of construction	One percent labour cess	Labour cess deducted	Remaining labour cess
636/UPCL/CE/CCP II/16/2011-12 dated 04.07.2012	Sterling and Wilson Ltd	33700281	337002	44085	292917
412/C/C&P I/43/2012-13	M/s Vishwanath Projects Ltd.	50036168	500361	24221	476140
ESWC(D) 07/11-12	Kashmirilal Constructions Pvt. Ltd.	8156239	81562	14835	66727
568/UPCL/CE/CCP II/8/2011-12 Dated 07.06.2012	M/s Saggi Electric Co.	26339389	263393	4050	259343
1114/UPCL/GM/CCP II/2009-10	M/s Saggi Electric Co.	19113429	191134	-	191134
513 ESWC(D)04/10-11	Capital Electech Pvt. Ltd.	18046237	180462	-	180462
ESWC(D)/05/10-11	Kashmirilal Constructions Pvt. Ltd.	10744811	107448	-	107448
<b>Total</b>					<b>1574171</b>

Non deduction of the same from running bills submitted by contractors resulted in violation of the provision of Building & Other Construction Workers' Welfare cess Act, 1996.

Division replied that they received the letter in respect of deduction of labour cess on 21.10.2014 and since then labour cess is being deducted from all the agreements as per the provision. All the cases quoted by audit are of years earlier than 2013. Reply of the division is not convincing as the labour cess is applicable from 15.06.2012 the date on which labour commissioner intimated the same to UPCL HQs. Therefore, labour cess should have been recovered from all the agreements after that period.

## Part-IIB

### Para1: Deficiencies in signed agreement

Section 20(1) of the Uttarakhand procurement Rule 2008 provides that to safeguard against a bidder's withdrawing/altering its bid during the bid validity period in the case of advertised or limited tender enquiry, bid security (also known as earnest money) is to be obtained from the bidders except those who are exempted under specific provisions of law or rules. Amount of bid security should ordinarily range between 2% to 5%. The given percentage will depend on the total cost of the agreement viz; (i) Upto ` 1 lakh – the security should be 5%, (ii) ` 1 lakh to 5 lakh the security should be - 4%, (iii) ` 5 lakh to 25 lakh - the security should be 3% and (iv) Above ` 25 lakh - the security should be 2% shall be charged.

Also, section 21 of the rule states that to ensure due performance of the contract, performance security is to be obtained from the successful bidder who has been awarded the contract. Performance security is to be obtained from every successful bidder; performance security should be for an amount which is 5 to 10% of the value of the contract. Performance security should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the suppliers/bidders including warranty obligations. Bid security should be refunded to the successful bidder on receipt of performance security.

Electricity Secondary Works Circle, UPCL entered into an agreement vide agreement number ESWC(D)4/11-12 amounting to ` 84.32 lakh with M/s JOP Power Infra Engineering (contractor) on 14.11.2011 for construction of 2x8 MVA 33/11 KV Substation at Transport Nagar, Dehradun on Turnkey basis. L.O.A of the work was issued on 2.11.2011. As per the agreement, work was scheduled to be completed within four months from the date of issue of LOA i.e. the work should have been completed by 02.03.2012. After signing of agreement circle transferred the work to secondary works division for the execution of the same.

Scrutiny of the records revealed the following:

- Instead of obtaining two *per cent* of the contract value (` 1.69 lakh) as bid security, Circle accepted only ` 0.86 lakh i.e. one *percent* of the contract value which is a violation of Uttarakhand procurement Rule 2008, which was used as security deposit.
- It was also observed that in the agreement there was no provision of performance security or Bank Guarantee which should be 5 to 10% of the value of the contract, due to this division could not obtain the same. While, the same is mandatory to

obtain for financial safeguard of the UPCL as the UPCL may forfeit the same in case of incomplete or poor performance of the contractor.

- The contractor did not complete the work in scheduled time, also the quality of work was not satisfactory which was pointed out by the then Executive Engineer of the division vide letter no. 166/ESWD/D/ dated 26.02.13. Further, the circle has not included any clause relating to defect liability period of contractor in the agreement.
- As per the clause 4.0 of the agreement the penalty (LD) should have been deducted on uncompleted portion @ ½ percent per week and maximum upto 10 percent. As the work was not complete till 19.03.2013 which was the scheduled completion date, hence 10 percent penalty amounting to ` 6.22 lakh<sup>1</sup> should have been deducted against which penalty amounting to ` 5.09 lakh were deducted.

Thus, undue benefit was extended to contractor due to lack of appropriate provisions in the contract. Division stated that the draft of agreement was prepared by the circle office and the bank guarantee in form of demand draft was available with the circle, therefore, action relating to encashment of bank guarantee was to be done by circle only. Also, final payment of ` 7 lakh of the contractor are pending with the division and recovery if any will be made from it.

Reply of the division is not convincing as provisions relating to financial safeguard of UPCL were not included in the agreement as there was no provision of performance security how will the division protect its interest and ensure the quality of work also reply is silent on the status of work and whether the bank guarantee has been encashed or not.

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<sup>1</sup> Contract value ` 8431515.61- work completed within scheduled time of ` 2211304.80= the penalty of 10 % should be imposed on ` 6220210.80)

**Para 2: Undue favour to contractors by not taking insurance cover by contractors.**

UPCL entered into two turnkey agreements no. 1369/UPCL/CCP-II/2/2013-14(Fedders)/Package-B dated 25.10.2013 amounting to ` 1.89 crore with M/s Fedders Lloyd and agreement no. 410/UPCL/CE/CCP-II/17/2013-4/Package-A(RPI) dated 04.03.2014 with M/s R.P. Infrapower Pvt. Ltd., amounting to ` 18.22 crore for construction and commissioning of various substations and associated lines.

During scrutiny it was observed that the progress of the above contractors was very poor and that they have also not deposited copy of insurance policy which the contractor must provide as per clause 8 of the agreement for safeguarding the equipments and materials. As per the clause 8.4 of the agreement, insurance cover should be in the joint name of UPCL and contractor. Further, as per clause 42.7 of the general conditions of the agreement, if the contractor fails to provide the documents of insurance, the employer (UPCL) can take such insurance and charge it from the contractors.

It was noticed that contractor has neither submitted their insurance policy nor the division has taken the insurance as per above clause, thus division not only extended undue benefit to the contractors to the extent of insurance premium but also risked its financial stake by not taking insurance on own. Division replied that the instruction to obtain insurance policy is being issued to contractors. The reply of the division is not convincing as division could have taken the insurance policy on their own and considering the fact that most of the zones of Uttarakhand fall in high seismic zone appropriate insurance should have been taken to protect the interests of UPCL. Also, if the division had taken the insurance policy on their own, it could have charged the same from the contract price. Thus, by not taking the insurance of projects the division has extended the benefit to the contractor by the amount of premium.

**Para 3: Non submission of B.G. by contractor for defect liability period.**

UPCL entered into an agreement no. 1597/UPCL/CE/CCP-II/12/2013-14(Bhagwan) dated 27.12.2013 for construction of 33/11 KV Substation Pandukeshwar & Augustyamuni & its associated 33 KV line with M/s Bhagwan Singh Pundir, Dehradun amounting to ` 2.49 crore. After signing of agreement the contract was transferred to Electy. Secondary works division for execution.

During scrutiny of records of the division, it was observed that as per clause 20.0 of the agreement, the contractor was to provide separate bank guarantee for transformers 33 KV and 11 KV SWITCHGEARS for a period of 24 calendars months from the date of commissioning or 30 months from the date of receipt of equipments whichever are earlier. The 33/11 KV Substation Pandukeshwar & Augustyamuni were energized on 25.04.2015 and 14.11.2014 respectively.

The division without asking for Bank Guarantee covering the defect liability period for transformers 33 KV and 11 KV SWITCHGEARS for a period of 24 calendars months returned back the original Bank Guarantee amounting to ` 25.00 lakh to the contractor on 01.02.2016

Thus, by not retaining bank guarantee for the complete defect liability period i.e. 24 months from date of commissioning i.e. up to 25.04.2017, the division has not only extended benefit to the contractor but also jeopardised the financial interest of the corporation. Division replied that after completion of above work the performance guarantee of the contractor was returned and a letter is being written to get the required guarantee. The reply of the division is not convincing as the performance security of the contractor should have been released only after obtaining the bank guarantee for transformer and 33 KV and 11 KV Switchgear.

#### **Para 4: Slow progress of work**

In February 2004 Government of Uttarakhand issued a notification No.259/1(2)2010-07(03)/01/2014 dated: 09.02.2009 that no contract shall be awarded by any department without ensuring proper availability of land for execution of the work.

During scrutiny of the records of the division it was observed that UPCL has awarded work related to construction of four 33/11 KV substation without ensuring suitable land for the same.

<b>Sl. No.</b>	<b>Name of work</b>	<b>Name of contractor</b>	<b>Amt. in lakh</b>
1	33/11 KV S/s Rajendra Nagar	M/s Reliance Electric works dt. 14.10.14	325.78
2	33/11 KV S/s Sehdevpur	M/s Shiva Electrical dt. 18.03.15	373.93
3	33/11 KV S/s Gular Kaudiyala	M/s R.P. Infra power dt.04.03.14	133.35
4	33/11 KV S/s Tapovan	M/s R.P. Infra power dt.04.03.14	27.06

Had the UPCL arranged land before agreements, the progress of these works could have been ensured. Due to non availability of land there was zero financial progress in above works. Division stated in its reply that all the above agreements were entered into by headquarter office, in respect of Rajendra Nagar Substation the selected land was disputed by Nagar Nigam and other agreements were entered into for timely execution of work and in the anticipation of availability of land but because of uncontrollable factors there was delay in selection of land. The reply is not convincing as these agreements should have been entered after finalisation/ selection of land so that these substations could energised in time and it is also violation of the above rule.

**Para 5: Irregular payment to contractor.**

Contract and Procurement wing of UPCL entered into an agreement on 23.08.2014 for construction of 6 numbers of 33 KV feeders from 132/33 KV substation, simli & line out and bay at Gaucher substation and 33KV bay at 33/11 KV substation, Gaucher on turnkey basis with M/s J P Electricals Industries, Dehradun. The completion period was 9 months from the date of providing right of way/ forest clearance (if required). Terms of payment of the agreement states that 60 percent of the cost of material of the BOQ approved will be paid on production of invoice, accepted test certificates etc. 30 percent payment of material price and 90 percent of erection price of the BOQ approved will be paid against completion of particular work which was put in commercial use as certified by Engineer in charge, thus making total work of 90 percent contract price. Balance 10 percent of contract price will be paid after handing over of complete work.

During scrutiny of payment vouchers it was noticed that contractor submitted 9 and 10 running bills amounting to ` 14.30 lakh and ` 18.25 lakh. The bills were related to 90 percent erection cost and release of 30 percent of supply cost of particular work. The work so completed was not clearly identified. Division passed the bills without Engineer in charge certificate (same was put in commercial use) as mentioned in payment clause. This resulted in violation of payment terms of agreement and undue benefit was given to contractor.

Division replied that the payment to the contractor is being made as per the order of the Headquarter dated 14.08.2014. The reply of the division is not convincing as the payment to the contractor was made without the certificate of commercial use. Also, division has not provided the copy of the letter of Headquarter which has been quoted as the reason for payment.



**PART III**

-----NIL-----

**Sr. Audit Officer/ES-I**