



FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2019-2021)**

EIGHTY NINTH REPORT
(Presented on 18th June, 2019)

**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2019**

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EIGHTY NINTH REPORT

On

KERALA STATE ELECTRICITY BOARD LIMITED

**(Based on the Report of the Comptroller and Auditor General of India
for the year ended 31 March, 2014)**

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COMMITTEE ON PUBLIC UNDERTAKINGS (2016-2019)

COMPOSITION OF THE COMMITTEE

Chairman :

Shri C. Divakaran.

Members :

Shri K. B. Ganesh Kumar

Shri C. Krishnan

Shri Thiruvanchoor Radhakrishnan

Shri P. T. A. Rahim

Shri S. Rajendran

Shri Raju Abraham

Shri Sunny Joseph

Shri C. F. Thomas

Shri M. Ummer

Shri P. Unni.

Legislature Secretariat :

Shri V. K. Babu Prakash, Secretary

Shri P. B. Suresh Kumar, Joint Secretary

Shri G. Harish, Deputy Secretary

Smt. Reji D. O., Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2019-2021) having been authorised by the Committee to present the Report on its behalf, present this Eighty Ninth Report on Kerala State Electricity Board Limited based on the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2014 relating to the Public Sector Undertakings of the Government of Kerala.

The aforesaid Report of the Comptroller and Auditor General of India for the year ended on 31 March 2014, was laid on the Table of the House on 23-3-2015. The consideration of the audit paragraphs included in this report and the examination of the departmental witness in connection thereto was made by the Committee on Public Undertakings constituted for the years 2016-2019 at its meetings held on 21-6-2017 and 13-12-2017.

This Report was considered and approved by the Committee (2019-2021) at its meeting held on 8-5-2019.

The Committee places on record its appreciation for the assistance rendered by the Accountant General (Audit), Kerala in the examination of the Audit Paragraphs included in this Report.

The Committee wishes to express its thanks to the officials of the Power Department of the Government Secretariat and Kerala State Electricity Board Limited for placing the materials and information solicited in connection with the examination of the subject. The Committee also wishes to thank in particular the Secretaries to Government, Power and Finance Department and the officials of Kerala State Electricity Board Limited who appeared for evidence and assisted the Committee by placing their views before it.

Thiruvananthapuram,
8th May, 2019.

C. DIVAKARAN,
Chairman,
Committee on Public Undertakings.

REPORT
ON
THE KERALA STATE ELECTRICITY BOARD LIMITED

3.6 AVOIDABLE LOSS

Loss due to non-execution of agreement : ₹ 3.36 crore

Kerala State Electricity Board (KSEB) follows two bid system (Technical bid and financial bid) for procurement of electrical equipment/machinery for generation/transmission/distribution system. The successful bidder is required to furnish security deposit (SD) at the rate of five per cent of the value of contract and execute an agreement within 15 days of receipt of purchase order (PO) to ensure prompt execution of order. If the party does not supply ordered items after entering into contract, KSEB can arrange alternate purchase by inviting fresh tenders at the risk and cost of the original supplier.

KSEB invited (July 2010) tenders for purchase of 32 11 KV 10 panel sets, used for control of 11 KV feeders at Sub Station end, with spares on fixed price basis. The validity of bid was six months from the date of opening pre-qualification bid or four months from the date of opening of the price bid whichever was earlier. The pre-qualification bid were opened on 12 August 2010 and the Pre Qualification Committee (PQC) met on 17 February 2011. The rate of ₹ 21.83 lakh per unit offered by Electroteknica Switchgear Private Limited (ESPL) being L1 was accepted. KSEB placed two purchase orders-one dated 4 June 2011 for four sets and another dated 4 July 2011 for remaining 28 sets. In line with the terms of the purchase orders, agreements were to be executed within 15 days after receipt of purchase order by the supplier.

ESPL intimated³⁰ (August 2011) their inability to execute the order unless price variation as per IEEMA³¹ price variation formula was accepted by KSEB as there was undue delay³² in finalising tender and their drawings were approved only on 28 July 2011. After receipt of firm's letter demanding price escalation, the

30 Letter No.ESPL/2121/MKM dated 23-8-2011.

31 Indian Electrical and Electronics Manufacturers Association.

32 Purchase Order was placed on 4-6-2011 for which tenders were invited on 12-7-2010.

Chief Engineer (TC&M)³³ directed (September 2011) the firm to execute an agreement and furnish security deposit. As the firm was not willing to the order unless price variation was allowed, they did not execute the agreement.

The firm's request for price variation was rejected by KSEB as the tender was floated on fixed price basis and the Purchase Committee³⁴ in its meeting held on 18 October 2011 decided to cancel the order and to invite fresh tenders at the risk and cost of ESPL and to black list the firm for five years. Further, it was noticed that the extended validity of offers of other firms had expired as early as in April 2011. Accordingly, KSEB invited (November 2011) fresh tenders and purchase order on fixed price basis was placed (July 2012) for supply of 32 panel sets with spares with Megawin Switch Gear (P) Limited (MSGL) at an all inclusive rate of ₹ 32.49 lakh per unit which was higher by ₹ 10.66 lakh of LI's offer in the previous tender. The firm supplied 32 panel sets during October 2012 to November 2013 at a total cost of ₹ 10.40 crore. KSEB had to incur extra expenditure of ₹ 3.41 crore for purchase of panel sets as shown below:

Table 3.6: Details of extra expenditure

Sl. No	Particulars	
1	Total cost of 32 panel sets at the rate of ₹ 21.83 lakh as per first tender	6.99
2	Total cost of 32 panel sets at the rate of ₹ 32.49 lakh as per retender	10.40
	Extra expenditure (2-1)	3.41

It was noticed during audit that a notice was sent by KSEB to the supplier (ESPL) to pay risk and cost amount but ESPL replied that in the absence of any agreement they did not violate any condition of the contract.

33 Chief Engineer (Technical, Contracts & Materials) was later redesignated as Chief Engineer (Supply Chain Management)

34 Comprising of Chief Engineer (Supply Chain Management), Deputy Chief Accounts Officer in charge of Financial Adviser, Members (Generation Projects/Transmission & Generation Operation/ Distriution/Finance) and Chairman.

KSEB stated (September 2014) that the office concerned had directed the firm to execute the agreement and furnish security deposit which was not acceded to by the firm. It was also stated that firm's request for IEEMA price variation was main reason for blacklisting them and invitation of fresh tenders.

The reply was not tenable as KSEB had directed (September 2011) the firm to execute agreement only after receiving demand for price escalation and not within 15 days of issue of purchase order.

Thus, non-execution of agreement absolved the supplier from the liabilities and KSEB could not recover the extra expenditure of ₹ 3.36 crore³⁵ from the said firm by invoking risk and cost Clause due to absence of a valid agreement.

The matter was reported (August 2014) to Government and reply is awaited (November 2014).

[The Audit Paragraph 3.6 contained in the report of C&AG for the year ended 31st March 2014]

The notes furnished by the Government on the Audit Paragraph are given in Appendix II.

Discussion and findings of the committee

The Committee enquired about the loss of ₹ 3.36 crore incurred due to non-execution of agreement for the purchase of 32 11 KV 10 panel sets with spares on fixed price basis.

The witness explained that KSEB placed purchase order with ESPL (Electroteknica Switchgears (P) Ltd.) in a 2 bid system for supply of 11 KV 10 panel set to the Board. Even though the purchase order had definite provisions for execution of an agreement within 15 days of receipt of purchase order by the firm, ESPL agreed to supply equipments within 15 days without executing the agreement. Later the firm demanded a date extension for the supply of equipments. KSEB approved the date extention to ESPL taking into account the importance of materials to be supplied. Owing to a steep escalation in prices, which came about, ESPL, forseeing a loss of ₹ 3 crore, backed out and demanded

35 ₹ 3.41 crore – ₹ 0.05 crore (EMD forfeited)

IEEMA price variation in order to supply the equipments. The witness further added that the only option before KSEB was to cancel the purchase order, forfeiting the Earnest Money Deposit (EMD) remitted by the firm and black list the firm and acted accordingly. KSEB then invited fresh tenders for purchase of the said equipment and the new tender could be finalised only at a higher rate leading to an extra expenditure of ₹ 3.41 crore.

The Committee enquired about the legal provision which could be employed to penalise the firm for non-supply of equipments in time. The witness explained that the extra expenditure incurred could have been recovered from the firm if the agreement had been executed with the firm. In the absence of agreement, KSEB did not have any legal provisions to realise the extra expenditure incurred. The only thing the Board could do was to forfeit their EMD and to blacklist them.

The Committee demanded to know whether the price escalation occurred within 15 days of issue of the purchase order. The witness replied in the negative and admitted that it was due to the delay which came in executing the agreement.

The Committee blamed the KSEB for refraining from taking any action against ESPL and wanted to know the reason for undue delay occurred in executing the agreement within the stipulated time limit. The Committee was not satisfied with the explanation given by the witness and demanded to submit the file regarding the tendering and purchase details of 32 11 KV 10 panel sets before the Committee.

The Committee examined the documents regarding tendering and purchase details and considered the explanation furnished by KSEBL on para 3.6 (2013-14) in its meeting on 13-12-2017. The explanation furnished by KSEBL is given in Appendix III.

The Committee demanded a detailed explanation on the purchase of 32 11KV 10 panel sets. The witness elaborated that delay had indeed occurred at various stages during the first tender process and when the first bidder refused to sign the agreement and demanded price escalation, the Board had gone in for re-tender and purchase order placed with another company at a higher rate. The witness also explained that they had blacklisted and forfeited the EMD of the first company. The witness also

admitted that there was lapse on the part of KSEBL to issue purchase order in time according to the purchase procedures, which caused an extra expenditure of ₹ 3.41 crore.

The Committee enquired about the reason for not executing an agreement with the first bidder. The witness replied that it was the supplier who refused to execute the agreement since the validity period had expired.

The committee remarked that there was lapse on the part of KSEB officials in enforcing the whole process of tendering

Observations/Recommendations

1. The Committee criticizes the Board for not executing agreement with Electroteknica Switchgear Private Limited (ESPL) within the validity period according to the provisions in purchase order in the purchase of 32 11KV 10 panel sets. The Committee recommends that KSEBL should follow the rules and regulations of the tender process as per the Stores Purchase Manual in future. The Committee also insists that KSEBL should not implement their projects on the basis of assumption.
2. The Committee reprimands KSEBL officials for the delay occurred to issue purchase order in time according to purchase procedures, letting the defaulted supplier ESPL to evade from the liabilities and thereby incurring an extra expenditure of ₹ 3.36 crore. The Committee recommends to take effective measures to recover the liabilities from the defaulted supplier and report the same to the Committee.

Thiruvananthapuram,
8th May 2019.

C. DIVAKARAN,
Chairman,
Committee on Public Undertakings.

APPENDIX I

SUMMARY OF MAIN CONCLUSIONS/RECOMMENDATIONS

Sl. No.	Para No.	Department Concerned	Conclusions/Recommendations
(1)	(2)	(3)	(4)
1	1	Power	The Committee criticizes the Board for not executing agreement with Electroteknica Switchgear Private Limited (ESPL) within the validity period according to the provisions in purchase order in the purchase of 32 11KV 10 panel set. The Committee recommends that KSEBL should follow the rules and regulations of the tender process as per the stores Purchase Manual in future. The Committee also insists KSEBL should not implement their projects on the basis of assumption.
2	2	Power	The Committee reprimands KSEBL officials for the delay occurred issue purchase order in time according to purchase procedures, letting the defaulted Supplier (ESPL) to evade from the liabilities and thereby incurring an extra expenditure of ₹ 3.36 crore. The Committee recommends to take effective measures to recover the liabilities from the defaulted supplier and report the same to the Committee.

APPENDIX-II

NOTES FURNISHED BY GOVERNMENT. ON THE AUDIT PARAGRAPH

C Audit Report 2013-14

Sl No.	Audit Paragraph	Reply Furnished by Government
7	2	3
1	3.6	<p>As per Purchase Plan 2010-12 dated 12/07/2010, the requirement of 11 KV /10 panel sets was 36nos. After considering the Additional Purchase order for 4nos, Two part tenders were invited on fixed price basis vide bid No.TCM.37/2010-11 for the purchase of 32 sets of 11 KV 10 Panel Set with Spares. Last date and time of sale of bid was 28/07/2010 at 5pm. Last date & time of submission of bid was 12/08/2010 at 4pm. The Pre-qualification bids were opened on 12/08/2010 at 3pm. Eight firms had participated in the tender. After opening the bids, commercial and technical evaluations were done.</p> <p>It may be noted that 11 KV 10 Panel Indoor Switchgear is an important equipment in the substation, in order to maintain the 11 KV supply and considering the very important safety aspects. So the scrutiny of the technical parameters such as performance of relays, Current Transformers, Potential Transformers, Vacuum Circuit Breakers etc. offered by the 8 firms were very crucial and time consuming.</p>

After scrutiny of the technical and commercial parameters, the offers were further scrutinised at System Operation Circle, Thiruvananthapuram for verifying the performance of relays and safety aspects, considering their expertise in the field. After preparing an initial Pre-Qualification note the same was forwarded to the Office of the Financial Adviser for financial scrutiny. Based on the Financial Adviser's remarks clarifications were sought for from all the 8 firms on 04/01/2011 regarding missing documents and confirmation on performance of technical parameters etc. In order to get more competition, Board had to wait till receiving the clarifications from all the firms. Since these processes were to be carried out, Pre-qualification Committee could meet only on 17/02/2011. Meanwhile, validity of offers of 8 firms were due to expire on 12/02/2011. Since it is understood that the scrutiny of the bids would take time, all the firms were requested in advance vide letter dated 22/01/2011 to extend their validity of offers upto April 2011. Out of 8 firms, 5 firms extended the validity of their offer. Out of the other 3 firms M/s. Siemens Limited had not even furnished their clarifications/ missing documents.

M/s. Biocolawrie Limited had never qualified in previous tenders floated from KSEB. M/s. Crompton Greaves Limited had not supplied 11 KV 10 Panel sets to KSEB for the past 11 years.

1	2	3
<p>Hence non extension of validity of these 3 firms had not affected the tender procedure and K.S.E.Board did not lose, any opportunity. From the above it is very clear that the Pre-Qualification Committee meeting was not delayed. The same was extended to verify all technical and commercial aspects and to collect clarifications from the firms. Without clarifications, KSEB had no other option than to reject all bids.</p> <p>Purchase Order was placed with M/s. Electroteknica for 4 sets of 10 Panel sets on 04/06/2011 with delivery schedule to complete the supply within 2 months from the date of Purchase Order. This delivery schedule was reduced in order to meet the urgent requirement of 100 days programme declared by the Government of Kerala.</p> <p>The drawing was furnished by the firm on 24/06/2011. Since the equipment was an important item, the technical parameters of the same were very crucial. Hence the scrutiny of the drawing was to be made with utmost care. On scrutiny of drawings many, corrections were noticed and the drawings were approved provisionally on 14/07/2011 with intimation to the firm to revise the drawing after incorporating the corrections. The firm had furnished revised drawings on 21/07/2011 and the same was approved on 28/07/2011. Considering the technical importance and safety aspects of the</p>		

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equipment the time taken for approval of drawing is justifiable and unduly delay was not there in approval of drawing. The firm had neither remitted Security Deposit nor executed the agreement even after repeated requests from Board. Meanwhile the firm demanded for delivery extension without imposing penalty and demanded price variation as per IEEMA calculations. Since the tender was floated on fixed price basis, the firm's request for price variation could not be considered since it is against the tender procedures and the Board had decided accordingly.

It is true that as per clause (5) regarding execution of Agreement that the firm has to execute the agreement within 15 days from the date of P.O. But if the supplier is not executing the agreement, KSEB Ltd has no other option left than to request them to execute the agreement. Even then they were not executing the agreement and hence the option left with KSEB Ltd was to cancel the Purchase Order and invite fresh tender. So the observation of the audit that the Purchase Committee had not considered the fact of non-execution of the agreement by the firm while resorting the re-tender is not true. Purchase Committee considered all the possible options and found that there was no other better option left than retendering for meeting the urgent requirement of the equipment in the field. The equipment was essential for the safety of the

1	
2	
3	<p>installation and the safety of the operating personnel.</p> <p>KSEB was willing to extend the delivery period without imposing penalty, considering the fact that there was provision in the tender for 3 months for initial supply and the process of approval of drawing was completed only on 28/07/2011. But the firm demanded Price Variation as per IEEMA formula along with delivery extension which was against the tender condition. The firms request for IEEMA Price Variation was the main reason for blacklisting the firm and inviting fresh tender.</p> <p>It is true that the main reason for canceling the tender and blacklisting the firm was the request by the firm for IEEMA price variation which KSEB Ltd could not accept, as the tender was invited with the specific condition of "fixed price basis". Allowing price variation to the LI firm after issuing the Purchase Order can lead to litigations from other tenderers, participated in the tender.</p> <p>It may be noted that the delay in finalizing the tender was mainly due to the time taken for technical and commercial evaluation of Pre-qualification bids. Subsequent tender was also finalized after six months. KSEB has analyzed the delay in finalizing tender. Now, KSEB Limited has taken corrective measures to cut short this time by introducing vendor registration. In this</p>

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case the Pre-qualification evaluation of the vendors will be done based on technical and commercial evaluations. A list of qualified vendors will be prepared and the qualified vendors alone will be allowed to participate in the tender for the particular item. Instead of two part tenders price bids alone will be collected from approved vendors and processed. KSEB Limited has already conducted vendor approval and list of vendors were approved for distribution transformer, Weather Proof Wire, Conductors etc. For Vendor registration of major items KSEB Limited has signed a Memorandum of Understanding with CPRI, Bangalore (A Government of India Society) on 06/01/2014. A tender for vendor registration was invited and the same was forwarded to CPRI, Bangalore and the process will be completed at the earliest.

Reference

KETNAM
 A National Society
 Power Department
 Government Secretariat
 Phone: 2531111

APPENDIX-III



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated Under the Companies Act, 1956 (No.1/1956)

Corporate Identity No.U40100KL2011SGCO27424

Corporate Office (Supply Chain Management)

Vydyuthi Bhavanam, Pattom, Thiruvananthapuram- 695004, India,

Ph:+91-471-2446853,Fax:+91-471-2447246,

E-mail:cescm@kseb.in

No : SCM/SS/107/2017-18/AEE1/XT/ General / AUDIT/ 5527

Date : 12.12.2017

From,

The Chief Engineer (SCM)

To,

The Deputy Secretary,

PUC Section

Post Box:5430

Kerala Legislative Secretariat

Sir,

Sub : Procurement of 11kV 10 Panel Set from M/s.Electroteknica, Culcutta- Clarifications-forwarding.

Ref: 1) Letter no. 19556/PUCB1/2017 dated 25/07/2017 endorsed to this office on 01/08/2017.

2) This office letter no. SCM/SS/107/2017-18/AEE1/XT/ General / AUDIT/3365 dated 11/09/17

3) That office letter no. 19556/PUCB1/2017 dated 04/12/2017

Under purchase plan 2010-12, tender No. TCM 37/2010-11 dated 12/07/2010 with PAC Rs. Rs.7.252 Cr was opened on 12/08/2010 for procurement of 32 sets of 11kV 10 Panel set with validity up to 12/02/2011. The tender was on FIXED price basis. 8 Bidders participated. Validity extension was given by 5 firms up to 30/04/2011. Out of 5 firms M/s. Krishna Energy was disqualified as per decision of Pre Qualification Committee held on 17/02/2011 and decision on prequalification of M/s. ALIND was referred to Full Time Members (FTM). FTM meeting on 15/03/2011 decided to disqualify M/s. ALIND. Price Bids of pre qualified bidders were opened on 23/03/2011. M/s. Electroteknica was the lowest (L1). In reply to rock bottom letter M/s. Electroteknica extended validity up to 30/06/11.

Purchase Committee (PC) meeting decided to split the order into two. First one for 4 sets of panels urgently to meet requirement of "100 days Programme" by Govt. Of Kerala and the second one of 28 sets to meet the balance Purchase Plan 2010-12. The purchase was scheduled in a phased manner considering the field requirement. Purchase Order (P.O.) was issued for 4 sets on 04/06/2011 with delivery period reduced to 2 months in purchase order instead of 3 months as per tender to meet 100 days programme requirement. Full Board ratified decision of the Purchase Committee on 14/06/2011 and Board Order was issued on 28/06/2011. Purchase order was issued for balance 28 sets on 04/07/2011 on full faith that company will extend the validity since the process of drawing approval and related activities were in progress.

On going through activities it is evident that there is no intentional delay. The Purchase decision was extended because of higher Probable Amount of Contract (PAC) for which Full Board (The

committee includes all the Board Members of KSEB and the members from the Govt. namely Pw Secretary, Finance Secretary and Non-official Member) decision was also necessary based on delegation of power to award the purchase order, conducted on prefixed date. The firm is proceeding with purchase order including drawing approval to meet the "100 days program requirement". However the firm's demand for price increase or variable price could not be accepted positively since the tender was called on "Fixed Price" basis. Price variation (on variable price tender) is allowed based on IEEMA (Indian Electrical and Electronics Manufacturers Association) for which the indices are published monthly. For this 10 panel set no price variation formula was applicable as per the tender condition. Since they failed to execute the agreement to supply even 4 sets of panels it was evident that they had no intention to supply against second order for 28 sets.

Though KSEB has taken all efforts to finalize the tender and earnestly tried to achieve targets of 100 days programme the firm asked for higher price or price variation without executing agreement even for the P.O. released within validity period. Since the agreement was not executed there is no other option but to forfeit the EMD of the firm and further they were black listed for five years.

The unit all inclusive rate in previous P.O. was Rs.22,66,136.00 and the rock bottom rate agreed by M/s. Electroteknica was Rs. 21,83,239.00, which is lesser. The firm had requested for price variation which means the market price for the item was increasing. So it was quite natural that there would be price increase in next tender.

Considering the above and actions taken by the KSEB Ltd, the audit query may be dropped.

Yours faithfully

Chief Engineer

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2019

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