

Norms for execution of public works –A critical Appraisal

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Executive Summary

Building works of Central Government used to be executed by Central Government Engineering organizations till year 2005. These organizations used to appoint contractors and consultants for execution of works. Both PSUs and private companies/firms used to competed with each other to get jobs either as contractor or consultant.

Post year 2005, New General Financial Rules (GFR) 2005 was issued by Ministry of Finance. The relevant Rules on the public works were also amended in New GFR 2005. For the first time, Government Ministries/Departments were permitted to directly engage PSUs for execution of their construction works. Subsequent amendments of GFR done in August 2010, April 2016 have also allowed Government Ministries to directly engage construction PSUs without involving Government's own engineering organizations. The new GFRs and subsequent amendments acted to elevate the status of construction PSUs from the contractor or consultant to that of an Agent working on behalf of the government. The PSUs became an arm of the government rather than merely a contractor or consultant. However the commercial nature of PSUs was ignored while making these changes. At times, PSU may find its profit maximizing goal to be at variance with the goals & objectives of execution of public works in public interest. New GFR 2005 were finalized on the recommendations of a task force which reviewed the then existing GFR 1963. From perusal of the report of this Task Force, It is observed that the report is silent on this aspect. This research study seeks to fulfill this gap.

To undertake any study related to related to smooth and orderly execution of public works, it is necessary to first review the entire ecosystem of norms for execution of public works. Therefore norms for execution of public works have been compiled in this study. It was found that the norms having impact on execution of public works are contained in various documents like constitution of

India, various statutes, Government of India rules, orders and instructions, CVC guidelines. These have been compiled in chapter 3 of this study. This is a ready reckoner helpful for policy makers and researcher.

The research study has tried to understand in detail the prevailing practices for execution of public works by collecting information on some Government works being executed by PSUs. Four case studies have been done through MoUs /Agreements entered into between Government organizations and PSUs for execution of works. The full texts of MoUs have also been incorporated in the dissertation as Appendices. One case study pertains to Integrated Development of “East Delhi Hub” on 30 hectares land at Karkardooma, Delhi by Delhi Development Authority. Another one pertains to construction of an office building in Ahmedabad by corporate affair Ministry. The two other case studies pertain to redevelopment of existing residential colonies of Government employees in New Delhi by Ministry of urban development.

After having collected data on prevailing practices as well as norms, the gap analysis has been contained for each of the case. The gap analysis brings out the major gaps between the norms and the prevailing practices. It is found from the study that there are serious gaps and the prevailing practices seriously divert from the norms laid down by various authorities to varying extent. These gaps are briefly outlined as under -

- (i) In order that PSUs act as agent of the Govt Ministries for execution of their civil works, their officers were required to be authorized by Ministry of Law notification to enter into contracts on behalf of the president of India as required under article 299 of the constitution. This notification was found not issued in any case.
- (ii) In some cases where projects were undertaken through alternate funding mechanism through sale of land/built-up area, the sale proceeds were deposited in an escrow account instead of consolidated funds of India. The sales proceeds were then used by the concerned Ministry for execution of project. This procedure caused bypassing of the parliamentary approval required for such

expenditures through budgetary process as laid down in article 266 and 114 of the constitution of India.

(iii) Certain checks and balances have been prescribed in Rule 18 of Delegation of Financial Power Rules (DFPR) and Rule 132 of General Financial Rules 2005 (GFRs) by Ministry of Finance through CPWD code and CPWA code to control expenditure on public works and to ensure safety and economy in construction works. PSUs were found not bound by the provisions of CPWD code and CPWA code. Thus Government checks and controls were diluted when works were undertaken through PSUs as Agents.

(iv) It was found that there is large number of PSUs in construction business. However no bids were invited for selection among them. Works were assigned to them on nomination basis. This practice was found deviating from laid down norms on the subject viz CVC guidelines, GFR 168-175, Ministry of Finance Manual of policies and procedure for appointment of consultants, Department of Public enterprises instructions and spirit of competition Act.

(v) In one case, it was found that the role of the PSU was not very clear as to whether it was an agent or contractor or consultant of the client organization. CVC guidelines to avoid conflict of interest prohibit giving contracting and consulting assignments of the same work to same business entity.

(vi) For execution of works, benchmarking has been done for quality standards and cost in documents published by CPWD and Bureau of Indian Standards (BIS). It was found that CPWD and BIS standards were not mentioned in some MoUs/agreements between Ministries and PSUs. Nor any other standards were prescribed to fix quality, price and accountability norms in execution of public works.

The above output of the research is of immense usefulness to authorities as these gaps, once known, needs to be plugged immediately. Any Law abiding society would like to confirm its actual practices conforming to norms.

There may be two possible ways to bridge the gaps between a norm and the practice, either to amend the norm or change the practice so as to conform to the

norm. In this study, the feasibility of amending the norms has been examined so that the practices become the norms. There is always a purpose of establishing any norm. Whenever any change is thought of, there will be consequences and impacts of such change. This study has brought out the issues which will arise when the proposal of changing the norms is considered. The major issues for deliberations of policy makers and administrators as identified in the study are as under -

- (i) Knowledge and experience of officers to be authorized to enter into contract on behalf of Union of India with regard to execution of public works, technical knowledge related to planning, design and construction of civil works, tendering procedures, contract management and techno-legal aspects of contract management.
- (ii) Conflict of interest between business interest of PSUs and Goals & Objectives of execution of public works
- (iii) Transfer of mandate for public expenditure through sale/lease of public land/built-up area from Parliament to executive and consequent dilution of accountability of executive towards parliament
- (iv) New Accountability mechanism for execution of public works directly by Ministries through PSUs to be framed laying down power and accountability of public works officers, procedure of execution, Accounting and auditing of public works to ensure safety and economy in civil construction
- (v) Ensuring efficiency of public expenditure
- (vi) Ensuring fairness and transparency in public expenditure
- (vii) Downsizing of in-house set-up in the wake of out sourcing through PSUs
- (viii) Applicability of contract management provisions enshrined in GFR 204 in respect of agreement with PSUs as PSUs
- (ix) A new Set of standards for building construction sector for execution of Government works through PSUs

(x) The applicability of standard Guidelines on conflict of interest in case of PSUs.

These issues impact the economy and efficiency of execution of public works with accountability. Therefore a thorough deliberation on these issues will be helpful for administrators and legislators while considering the changes in the norms. No value judgment has been made on the desirability or otherwise of changing the norms. That has been considered as policy matter within the domain of legislators and administrators. The same require thorough discussions and debates among various stakeholders in public interest and is outside the scope of this dissertation. The dissertation therefore ends with framing of issues in changing the norms.

This research study has made following major Contributions

(i) Putting at one place the entire ecosystem of norms for execution of public works which were hitherto spread over in many texts. This will be a good reference for anyone interested in study and practice of rules, systems and procedures for execution of public works.

(ii) The critical appraisal of practices and identification of the gaps between prevailing practices of execution of public works and the existing norms. Serious gaps have been identified between prevailing practices and norms which require immediate attention of policy makers and administrators.

(iii) Issues have been identified which will impact the execution of public works with efficiency, economy and accountability if the exercise to amend the norms is initiated with a view to bridge the gaps between the norms and the prevailing practices.
