

Delay in Bill-Processing due to improper application of a Provision in Delegation of Power

1.0 Need for System Improvement:

Timely passing of bills raised by contractors against works executed by them is an essential requirement for efficient and healthy contract management. Unusual delay in bill-passing not only leads to customer dissatisfaction and potential litigations, but can also result in increased procurement price, as contractors/suppliers tend to factor the expected delay into their bidding response against our tenders. Old, outdated and circuitous procedures can complicate simple official tasks, slow down organizational functioning and lower the ease of doing business for our external stake holders.

In a recent letter, Ministry of Shipping had solicited ideas from Port officials, to identify areas having repetitive and unwanted steps adversely effecting any port process. One such process which is already having serious systemic-consequence has been noticed by Vigilance Department, deserving immediate attention of Chairman. This is the area of mis-application of a particular provision in the DoP (Delegation of Power) for Major Port Trust circulated by the Ministry in 2015 concerning the powers to make “**additions/alterations**” to “**works during course of examination**”, enumerated in Annexure-I of the said DoP.

The consequence of *mis*-perception of this clause at KDS (and interestingly not at HDC), described below in detail, has already resulted in pendency of more than 40 bill-files belonging to several MSME Contractors for durations ranging from 3 months to 1.5 year. This number is understood to be growing by the day.

2.0 What is variation of quantities in a Contract?

Variation of quantities in individual “items of work”/“supply” contained in any Contract during execution, is a natural phenomenon. Depending upon the operational exigency, such quantitative contractual variation can take the form of increase/decrease in quantity contracted for individual item(s) of work/supply or even requiring a completely new, off-BoQ item not foreseen prior to contract-award. The net effect of all such variations made to individual item(s) in the BoQ at post-contract stage, constitutes the total quantitative change to a given Contract resulting in a “modified/Revised/Altered” Contract-Value. A Contract based on perfect estimate would have no need for any post-contract variations. Organizations undertaking contractual activities do provide for such “alteration/variation” within specified limits, subject to approval of Competent Authorities, through their financial delegation structure. The reason for placing limits on the amount of quantitative variations that can be effected to a contract at execution-stage, is to exercise caution. Allowing unbridled variations at execution stage encourages the tendency to first make an inexact estimate without due technical diligence, decide a contract on its basis and then go for either making alteration to existing quantities or even add a few off-BoQ items. Moreover post-contract operation of excess quantities for selective items of BoQ, or addition of completely new off-BoQ items, can amount to conferring non-competitive advantage to a single contractor, without the usual tendering route.

3.0 Analysis :

Analysis of pendency of these files by Vigilance Wing traces its origin solely to an interpretation by Finance Division at KDS regarding “**Sl. No.10 of Annexure-1 of Delegation of Power to Major Port Trusts (Non-Statutory)**”, which concerns with the limits of financial power exercised by various authority/authorities i.e HoD/Dy. Chairman/Chairman/BoT for allowing “addition/alteration” to works during the course of contract-execution. The exact reproduction of the aforesaid provision is as below:

10	To make additions/alterations to works during the course of execution	<p>Chairman- Upto 30% provided the total amount of WO/SO remains the powers of Chairman.</p> <p>Dy.Chairman- Upto 20% provided the total amount remains within the powers of the Dy. Chairman</p> <p>HODs- Upto 10% provided the total amount remains within the powers of HODs”</p>
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From the above provision it can be seen that as long as the total amount of WO/SO remains within the power of Chairman as a result of effecting additions/alterations to the contract, a variation of 30% can be approved by Chairman. Similar powers for Dy. Chairman & HoD for effecting alteration are 20% and 10% respectively subject to the provision that the “altered total contract value” must be within the power of Dy. Chairman / HoD.

From the limits of financial power stipulated at Sl.No.10 of the said Annexure, it is evident that a variation of 30% by Chairman is conditional only upon a single factor, i.e. that the net effect of such additions/alteration(s) not resulting in taking the modified value of the “WO/SO” beyond Chairman’s powers. In other words no matter whatever the addition/alteration to “individual constituent” of a contract (i.e an individual item of BoQ) during execution, as long as the net effect of such variations on the “total WO/SO value” does not exceed 30% of the original contract value and the altered total-contract-value after work-execution remains within the Chairman’s acceptance power, it would be permissible, as per the above provision of DoP.

Although the meaning of the said clause seems to be self-evident, it is understood to be applied differently in KDS & HDC (both under KoPT). For instance in KDS, even if the result of alteration to a given Contract remains within 30% and the modified value is within Chairman’s Power, if the variation to an individual constituent in BoQ exceeds 30% over the Agreemental-quantity, Finance Wing in KDS insists such proposals to be approved by BoT even though nothing in the above DoP Provision suggests that the alteration/addition limits prescribed therein should also be applied to “individual constituents of a Work Order”. In fact, had the intention of this provision been to limit the % variation to individual items of BoQ, then the subject on the left would have been written as “*To make additions/alteration to any item in the BoQ*” instead of its present form. For instance, suppose the BoQ of a contract contains an item of quantity 10 Units valued Rs 2000/- and during execution it is required to alter the same by another 10 Units. Such a variation amount to 100% increase for this particular item of BoQ. If one assumes the aforesaid provision to be applicable to individual items of a BoQ, then the above scenario would trigger the file movement all the way upto BoT for approval although the financial implication in such alteration is a mere additional two thousand rupees – a patently irrational result. Many of the contract files having execution-stage variation, currently remaining stuck up for long periods of time in the procedural-pipeline, belong to precisely this category.

4.0 How is this provision applied at HDC ?

When the Finance Authority at HDC were queried as to how they deal with a file where the alteration to an individual item in BoQ exceeds 20% but the enhanced total contract value (called STV in Port Parlance) is within 20%, the reply came in the following words:

“At HDC, the various limits prescribed at Sl.No.10 of Annexure-I of Delegation of Power referred to in the letter do not apply to individual constituents/item of the BOQ of a Work Order. It applies to the total value of the executed work. For example, if the Bill of Quantity or contacted quantity for an individual element/item in the BOQ increases by any percentage during execution, but the total financial value of the contract remains within 20% of the sanctioned value (STV)/ordered value, then sanction of Dy.Chairman is taken. In case the total executed value is more than 20%, but within 30% in excess of the sanction Tender Value, then sanction of Chairman is taken. Sanction of BOT is taken when total executed value is more than 30% of the Sanctioned Tender Value.”

5.0 Unchecked Post-Contract Variation: A Potentially Vulnerable Area

Such a perception might have arisen due to a zeal to curb opportunistic increase of item-quantities in a BoQ (called “Excess item” in KoPT parlance) at execution stage, decreasing quantities of unprofitable items or post-contract introduction of new “off-BoQ” items (called “extra item”). It is not to say that such concerns are not genuine. Runaway introduction of “extra items” at post-contract stage is worthy of concern since such operation results in favouring the contractor with “new” items of work, almost on a single-tender basis without going through the competition route. **But as it appears from the relevant provision in DoP (which is circulated by the Ministry) that the only limit prescribed is a 30% alteration to the Contract subject to such variation remaining within acceptance power of Chairman) beyond which Board of Trustees approval has been mandated.** If Administration desires to limit operation of “extra items” to a lesser extent, then guideline in this regard has to be separately circulated without infringing upon the said provision of DoP which has been laid down by Ministry.

It is however, important to note that in case of tenders where prices for each item is solicited (instead of the general practice of asking bidders to quote a certain % above below the total BoQ Value), quantitative variation of existing items may lead to tender-vitiation at execution stage which is to be always prevented. Such tender vitiation is not possible in case it is not a item-rate contract decided in terms of “percentage above/below basis”.

6.0 Required System Improvement

The provision of Delegation of Power vide Sl. No.10 of Annexure-1 of DOP to Major Port Trusts which lays down the limits of “additions/alterations to work” during the courses of execution, does not make any reference to “addition/alteration” to individual constituent(s) of the BOQ in a WO/SO during execution. Hence the percentage limits should not be construed as being applicable to individual item(s) in the BoQ of a WO/SO. As long as the effect of all such alterations does not alter the total value of WO/SO by the percentage limits specified in the foresaid provision for the relevant authorities and the altered total value of the contract remains within the power of acceptance said respective authority/authorities, it is permissible as per DOP.

NOTE : THE SUGGESTED SYSTEM IMPROVEMENT HAS BEEN ACCEPTED AND IMPLEMENTED THROUGH AN ADMINISTRATIVE ORDER.