CHAPTER - 5

COMPLIANCE AUDIT (PSUs)

Health and Medical Education Department

(Jammu and Kashmir Medical Supplies Corporation Limited)

5.1 Deficiencies in procurement of medicines and equipment by Jammu and Kashmir Medical Supplies Corporation Limited

There were delays in finalisation of rate contracts and consequent delay/ non-procurement of medicines/ drugs, instruments, machinery, equipment; thereby defeating the purpose of creation of the Company. Audit came across instances of non-levy of liquidated damages of ₹7.92 crore for delayed supplies, undue favour to a supplier by rejecting the seven bidders and procuring suture items at negotiated rates for ₹25.48 crore from the eighth bidder, non-operationalisation of 102 Ambulance Service in the State over a period of more than three years despite receiving ₹3.18 crore and non-observance of prescribed procedure for empanelment of testing laboratories leading to extra-expenditure of ₹9.47 lakh.

To purchase and supply medicines, surgical equipments, machinery/ vehicles for various medical colleges and hospitals of the State Government and to relieve the service providers (Head of the Departments/ Doctors) of the additional burden of procurement and distribution process, the State Government approved (May 2013) establishment of Jammu and Kashmir Medical Supplies Corporation Limited (Company) which was incorporated on 5th March 2014 under the Companies Act, 1956 and functions under the administrative control of the Health and Medical Education (HME) Department. Audit on procurement of medicines and equipments by the Company covering the period from 2014-15 to 2017-18 was conducted during March 2018 to June 2018 by test check of records of the Corporate Office and five[1] (out of 13[2]) Drug Ware Houses (DWH), selected on the basis of value of medicines/ equipments/ disposables handled during the period 2015-16 to 2017-18 and considering the regional balance of the two broad regions (Kashmir and Jammu) of the State of Jammu and Kashmir.

[1] Three in Jammu Province viz. (i) Regional DWH Nagrota (ii) GMC DWH Nagrota (iii) Regional DWH Rajouri and two in Kashmir Province viz. (iv) GMC DWH Srinagar and (v) Regional DWH Anantnag

[2] Seven in Jammu Province viz. (i) Regional DWH Jammu (ii) Regional DWH Nagrota (iii) GMC DWH Nagrota (iv) Regional DWH Kathua (v) Regional DWH Rajouri, (vi) Regional DWH Doda and (vii) ISM Provincial Jammu and six in Kashmir Province viz. (i) Regional DWH Anantnag, (ii) Regional DWH Baramulla, (iii) GMC DWH Srinagar (iv) DWH Dental College Srinagar, (v) Regional DWH Srinagar and (vi) ISM Provincial, Srinagar

Out of total expenditure of ₹573.63 crore incurred by the 11[3] Heads of Department in HME Department for procurement of drugs/ medicines, machinery/ equipment, furniture etc. during 2014-15 to 2017-18, only ₹236.07 crore (41 *per cent*) were transferred to the Company and procurements worth ₹337.56 crore (59 *per cent*) were made by these HoDs themselves, which indicated that the objective of relieving the service providers of the extra burden of purchase/ distribution was not served.

Audit observed that there had been delay in finalisation of Annual Rate Contract (ARC) leading to delay in procurement of drugs/ medicines/ machinery/ equipments. Audit findings are as under:

1. In first phase, the Company invited tender for the procurement of drugs/ medicines/ fluids comprising 870 items (increased to 940[4]) in June 2015, January 2016 and July 2016, out of which the Company finalised ARCs for only 592 items (63 *per cent*) in three instances during November 2015 and June 2017 by taking time ranging between 87 days and 320 days after issue of NIT (Notice Inviting Tender). Similarly, out of 723 items advertised (February 2017) in second phase, the ARCs for only 362 items were finalised during November 2017 and March 2018 by taking time ranging between 273 days and 403 days. Delay and non-finalisation of ARCs in respect of 348 drugs and medicines in first phase and 361 drugs and medicines in second phase implied that these items could not be procured by the Company for the indenting Department, thereby defeating the purpose of creation of the Company.

The Management attributed (March 2019) the reasons for delay in the first phase to lack of response from bidders. Delay in second phase tender was attributed to implementation of Goods and Services Tax (GST), as the rates quoted by the qualified bidders were pre-GST and the clarifications of basic rates sought after opening of bids and their manual calculations took extra time. Reply could be viewed in light of the fact that 87 to 403 days were taken for finalisation of rate contracts and there is an urgent need to devise a mechanism for time bound finalisation of ARCs, so as to ensure timely procurement of drugs/ medicines.

2. The Company had not prescribed any time-line for finalisation of technical/ financial evaluation, meeting of the State Level Purchase Committee (SLPC) and issuance of ARC in its Standard Procurement Procedures (SPP). Audit test-checked (June 2018) 16 NITs of 11 types of items viz. drugs/ medicines, sutures, disposals, instruments, machinery, equipments, etc. and observed that considerable time was consumed at various stages of procurement process as detailed in ***Appendix-5.1.1***. Time ranging between 26 days and 284 days was taken (in respect of 14 NITs) for

3 (i) Director Health Service (DHS) Kashmir; (ii) DHS Jammu; (iii) & (iv) Principal GMC and Associated Hospitals, Jammu; (v) & (vi) Principal GMC and Associated Hospitals, Srinagar; (vii) Government Dental College, Srinagar; (viii) Government Dental College, Jammu; (ix) Director, Indian System of Medicine Jammu and Kashmir; (x) Controller Drug and Food and (xi) Directorate of Family Welfare MCH and Immunisation

4 870 items in the initial NIT-01 of 2015, additional 45 items in NIT-356 of 2016 and additional 25 items in NIT-26 of 2016

holding technical evaluation meeting from the date of issue of NITs, between one day and 194 days (in respect of 11 NITs) for holding financial evaluation committee meeting from the date of holding of technical evaluation committee meeting, between three days and 253 days (in respect of 11 NITs) for holding SLPC meeting from the date of financial evaluation committee meeting. Overall time taken from issue of NIT to finalise the ARC/ RC (in 15 cases) ranged between 77 days and 487 days. Further, in one case ARC/ RC had not been finalised (March 2019) over a period of 737 days from the date of issue of NIT. Thus, due to delays in finalisation of ARC, the Company could not ensure the procurements for the indenting Department in a time bound manner.

The Management stated (March 2019) that the delay in finalization of tenders and issuance of ARC was due to reasons such as certain items requiring clearance from technical experts as well as laboratories, grievances/ complaints and court orders. The reply is not tenable as the Company failed to prescribe any time line for the various stages in its SPP.

3. The Company invited tenders for procurement of machinery/ equipments/ instruments to be supplied to the Indenting Health institutions. Audit scrutiny of 17 NITs invited by the Company during November 2015 to December 2017 revealed that against the requirement of 463 different types of instruments, machinery, equipment, etc. tendered by the Company, the rate contract of 118 items (25 *per cent*) was finalised (March 2018) between three months and 28 months. The rate contract in respect of remaining 345 items (75 *per cent*) had not been finalised despite lapse of 2 to 27 months from the date of issuance of NITs.

The Management attributed (July 2018) the delay to various stages including technical evaluation, physical demonstration of samples, rejection by the technical expert committee, etc. The Management also stated (March 2019) that delay was also due to non-participation of bidders and frequent unavailability of internet facility in Kashmir Valley as a result of which the NITs were extended several times, on the request of prospective bidders. The reply could be viewed in light of the fact that the ARCs/ RCs in respect of 75 *per cent* machinery/ equipment items had not been finalised despite lapse of 2 to 27 months from the dates of issuance of NITs.

4. For procurement of Suture[5] material (208 items of various specifications), Company invited (December 2015) tenders, wherein eight[6] manufacturers participated and technical bids were opened on 10th February 2016. However, it was arbitrarily decided (April 2016) that in view of past experience and patient safety, the Company would open financial bid of only M/s Johnson & Johnson (J&J), rejecting other seven bidders without assigning any reasons. This was done despite the fact that no adverse

[5] Various types of threads (absorbable/ non-absorbable) including needles, meshes, etc.

[6] (1) Johnson & Johnson Pvt. Ltd., (2) Lotus Surgical Pvt. Ltd., (3) Dolphin Sutures through Futura Surgicare Pvt. Ltd., (4) B. Braun Medical (India) Pvt. Ltd. through Shrim International Pvt. Ltd. (5) Sutures India Pvt. Ltd., (6) Meril Endo Surgery Pvt. Ltd. through Sanyog Enterprises, (7) MCO Hospital Aids Pvt. Ltd. and (8) Stericat Gutstrings Pvt. Ltd. through Crown Pharmaceuticals

comments were found against any of the participating bidders in terms of quality of material with regard to suture material used/ procured by the All India Institute of Medical Sciences (AIIMS) New Delhi and Tamil Nadu Medical Services Corporation Limited (TMSCL). The Company, after opening financial bid, issued (July 2016) Letter of Intent (LoI) in favour of J&J at negotiated rates in respect of 197 items and issued (October 2016 to March 2018) purchase orders valuing ₹27.03 crore, against which supplies of ₹25.48 crore were received till March 2019. The ARC for remaining 11 items was not finalised (March 2019).

Audit further found that Gujarat Medical Services Corporation Limited (GMSCL) and Rajasthan Medical Services Corporation Limited (RMSCL) had also made (26 April 2017/ 28 March 2018) rate contract of Suture items with bidders/ suppliers/ firms including those rejected by the Company.

The Management stated (March 2019) that for procurement of sample based items finalisation of tender depends upon the opinion of technical experts and at times item of single bid may get approved. However, to improve upon the existing system during 2018-19, the Company in the interest of fair competition has requested the end users to provide a fair chance to all the reputed manufacturers of suture material in the country. The reply is not tenable as the AIIMS, New Delhi and TMSCL had not reported any adverse comment against the manufacturers which were arbitrarily rejected by the Company. The rejection of seven bidders and procurement of suture items from J&J, at negotiated rates, defeated the very purpose of competitive bidding and had resulted in undue favour to the supplier.

5. In terms of para 6.1 of SPP of the Company, purchase orders should provide for 100 *per cent* supply within 60 days (in respect of Indian items) and 90 days (in respect of imported items) failing which penalty/ liquidated damages to the extent of maximum[7] 10 *per cent* shall be charged. In case of non-supply within 120 days, supply was deemed to be unexecuted. The Company may either accept supplies beyond 120 days after levying penalty of 20 *per cent* of the unexecuted supply or debar the supplier.

Test-check of 10 manufacturers/ suppliers (out of 108) who supplied 47 *per cent* of the supplies and to whom 2,421 purchase orders for ₹88.71 crore were issued upto September 2017 and against which supplies of ₹79.25 crore were received, revealed, that only supplies valuing ₹19.30 crore (24 *per cent*) in respect of 1,017 invoices were received within stipulated 60 days and the remaining supply of medicines/ drugs for ₹59.95 crore (76 *per cent*) was received beyond 60 days (***Appendix-5.1.2***). Delayed supplies comprised supply worth ₹35.97 crore (45 *per cent*) received after 61 to 120 days, ₹14.14 crore (18 *per cent*) after 121 to 200 days, ₹9.53 crore (12 *per cent*) after 201 to 400 days and ₹0.31 crore (one *per cent*) beyond 400 days. As per data furnished by the Company in respect of track purchase order generated through

[7] 2.5 *per cent* in case of delay ranging between one and 15 days and subsequent additional liquidated damages of 2.5 *per cent* for each 15 days delay upto 60 days

e-aushadhi, liquidated damages of ₹7.92 crore[8] which were required to be charged/ levied on these 10 suppliers were not levied and the same were condoned in respect of all supplies made by 29 December 2017 due to the reason that the Company failed to make timely payment to suppliers. Audit observed that the delay in making payment was due to the negligence on the part of the management, as the Company had sufficient funds for making payments. Thus, the failure of the Company to make timely payment to the suppliers despite availability of funds led to non-levy of liquidated damages for delay in supplies and impacted the availability of medicines/ drugs in the respective health institutions.

The Management stated (March 2019) that due to non-uniform funding pattern and delay in releasing funds by the HoDs, the Company was not able to make timely payments to the suppliers and the liquidated damages for delayed supplies upto 29 December 2017 were condoned with the approval of Chairman of the Company. However, during 2018-19, the Company imposed liquidated damages of ₹81 lakh for delayed supplies.

The reply is not tenable as the decision to condone the liquidated damages for all the delayed supplies upto a particular date was arbitrary. Further, the availability of adequate cash/ cash equivalents[9] at the close of financial years 2015-16 (₹71.54 crore) and 2016-17 (₹19.75 crore), as well as holding of funds received from State Government in civil deposits during 2016-17 (₹82.85 crore) and 2017-18 (₹59.83 crore) suggests that there were no constraints on account of availability of funds.

6. The Company invited (November 2015) tenders for 'Operationalisation of 102 Ambulance Service across the State' by way of installation of Healthcare Equipments, GPS system in 150 ambulances (BLS[10]: 123 and ALS[11]: 27) and setting up of two data centres and operation thereof, against which only two bidders participated. Technical Evaluation Committee (TEC) decided (April 2016) to open the financial bids wherein L1 had offered to execute the project at ₹37.10 crore. The SLPC, after 253 days from holding of meeting of financial evaluation committee, accorded approval of the rate contract on 07 January 2017 and the Company issued (January 2017) LoI to the successful bidder at a cost of ₹25.48 crore[12] for operationalisation of Ambulance services. However, the bidder sent (March 2017) termination notice, citing abnormal delay in facilitating the start of the project, including non-handing over of building and ambulances and increase in input cost[13] and the rate contract was cancelled (September 2017). The Company again floated NIT (November 2017); however, rate

8 Penalty was taken upto the purchase orders placed till September 2017
9 As per provisional accounts of the Company
10 Basic Life Support
11 Advance Life Support
12 As per revised decision (September 2016), CAPEX cost (Healthcare Equipment, GPS Device and Retrofitting charges) of 100 BLS ambulances and one call centre: ₹7.30 crore; OPEX cost (manpower, running and maintenance for one year) in respect of 125 ambulances (100 BLS and 25 ALS) and one call centre: ₹18.18 crore
13 Like fuel, implementation of GST, tax liability and manpower

contract could not be finalised (March 2018), despite the fact that ₹3.18 crore were received from the Ministry of Health and Family Welfare GoI, in March 2016. Thus, delay in finalisation of rate contract and facilitating the start of the project by way of handing over the building/ ambulances led to cancellation of the contract and project could not be executed despite availability of funds.

The Management replied (July 2018) that the space and ambulances were to be provided by the Indenting Department after execution of agreement which could not be handed over in view of non-execution of agreement. It was also stated that Director Health Services Kashmir and Mission Director NHM have expressed their reservations regarding operationalisation of the service, as no such model existed in the country. It was further stated (March 2019) that the tender was once again floated in August 2018 and the purchase committee had approved the L1 bidder to whom the LoI would be issued shortly. The fact remains, that despite availability of funds the envisaged project could not be finalised (March 2019) even after lapse of more than three years from the issuance of NIT.

7. The Company empanelled (December 2015) four laboratories[14] for testing and analysis of 1,336 items (out of advertised 2,043 drugs, medicines, surgical sutures) and rate contracts expired in August/ September 2017. Even after extension of three months, new tender was not floated till March 2018. The testing and analysis of drugs was assigned (October 2017) to a firm[15] empanelled with RMSCL and the agreement was executed (December 2017) without following the quality control policy and procedures which provided for empanelment of testing laboratories on the basis of L1 rates. Audit scrutiny revealed that for 608 tests (of 112 medicines) conducted by the firm, an amount of ₹15.71 lakh was paid. Out of 608 tests[16], in 487 tests (involving 87 medicines) the rates of the firm were 1.04 times to 12.54 times higher (₹9.51 lakh) than those of previously empanelled laboratories, while in 46 tests (involving eight medicines/ drugs), rates were lesser (₹0.04 lakh), thereby resulting in an overall extra-expenditure of ₹9.47 lakh. Thus, due to non-observance of prescribed procedure for empanelment of testing laboratories, competitive rates were not ensured.

The Management stated (March 2019) that the samples were being tested by the previously empanelled laboratories and the laboratory empanelled with RMSCL after seeking the approval of the Chairman[17] of the Company. It was also stated that State Level Purchase Committee has now finalised the empanelment of laboratories, but the rate contract had not been issued (March 2019). The fact remains that Company had failed to empanel the testing laboratories for around 18 months (October 2017 to March 2019) during which the testing and analysis was done from the laboratories selected without competitive bidding.

---

[14] (i) International Testing Centre, Panchkula, (ii) Dove Research & Analytical, Panchkula (iii) Ozone Pharmaceuticals Limited, Bahadurgarh (iv) Multani Pharmaceuticals Limited, Haridwar

[15] M/s Oasis Test House Limited

[16] In 75 tests (involving 17 medicines) comparison could not be drawn, as rates of empanelled laboratories were not available

[17] Minister for Health and Medical Education

8. The empanelled laboratories were required to furnish the test reports of samples in case of Tablets, Capsules, Ointments, Powder and Liquid Oral preparations within 10 days of receipt and in case of I.V. Fluids and Injections within 21 days. Failure to furnish test report within stipulated time, attracted penalty/ liquidated damages upto 10 *per cent*[18] of the laboratory charges payable. In test-check of seven months[19] database (out of 24 months), audit noticed that in case of tablets/ capsules/ oral preparations/ powder, etc. there had been delay ranging between one to 184 days in 566 (out of total 714) samples sent to laboratories. Similarly, in cases of Injections/ I.V. fluids, there had been delay ranging between one to 309 days in respect of 279 (out of 377) samples. However, penalty/ liquidated damages to the extent of ₹0.47 lakh[20] had not been levied on the defaulting laboratories. Delay in furnishing of reports by the laboratories delayed the issuance of drugs/ medicines to the indenting departments.

The Management stated (May 2018) that the matter has been taken up with the laboratories. It was further stated (March 2019) that the details of delayed reports have been updated so that the penalty/ liquidated damages could be charged. However, no penalty/ liquidated damages were recovered (March 2019).

Thus, there were delays in finalisation of rate contracts and consequent delayed/ non-procurement of medicines/ drugs, instruments, machinery, equipments; thereby defeating the purpose of creation of the Company. The Company had not prescribed any time line for finalization of rate contracts and making the procurements in a time bound manner. There were instances of non-levy of liquidated damages, undue favour to contractors, non-operationalisation of 102 Ambulance Service across the State despite availability of funds, non-observance of prescribed procedure for empanelment of testing laboratories.

The matter was referred to the Government/ Company in September 2018. Management provided its reply in March 2019, which has been incorporated in the report at appropriate places. However, reply of the Government was awaited (September 2019).

The cases pointed out are based on test-check conducted by Audit. The Department may initiate action to comprehensively examine similar cases and take necessary corrective action.

---

18 2.5 *per cent* in case of delay upto one fourth period of prescribed delivery period, five *per cent* in case of delay exceeding one fourth but not exceeding half of the prescribed delivery period and 10 *per cent* in case of delay exceeding half but not exceeding three fourth of the prescribed period

19 February 2016, May 2016, September 2016, January 2017, April 2017, August 2017 and December 2017

20 Penalty/ Liquidated damages of ₹0.30 lakh (in 521 cases) in case of Tablets, Capsules, Ointments, Powder and Liquid Oral preparations and ₹0.17 lakh (in 254 cases) in case of I.V. Fluids and Injections

Appendix – 5.1.1

(Reference paragraph: 5.1; Page: 142)

Statement showing time taken in finalisation of annual rate contract/ rate contract

Sl. No.	Category	Date of NIT	Technical evaluation committee meeting		Financial evaluation committee meeting		State level Purchase Committee meeting		Issuance of rate contract	
			Date	Time taken with respect to Col. 3	Date	Time taken with respect to Col. 4	Date	Time taken with respect to Col. 6	Date	Time taken with respect to Col. 3
1	2	3	4	5	6	7	8	9	10	11
1.	Drugs/ medicines/ fluids	01.06.2015	20.10.2015	141	17.11.2015	28	23.11.2015	6	25.11.2015	177
		19.01.2016	NA	-	NA	-	16.04.2016	-	16.04.2016	88
		16.07.2016	10.12.2016	147	19.12.2016	9	07.01.2017	19	07.01.2017	175
		02.02.2017	29.03.2017	55	20.09.2017	175	05.10.2017	15	03.11.2017, 15.11.2017, 13.03.2018	404
2.	Suture Item	18.12.2015	10.02.2016/ 23.04.2016	127	23.04.2016	-	19.10.2016	179	19.10.2016	306
3.	Hospital furniture	28.11.2015	04.03.2016	97	11.03.2016	7	14.03.2016	3	16.03.2016	109
		07.04.2017	16.01.2018	284	13.06.2018	148	04.07.2018	21	07.08.2018	487
4.	Dental material	09.12.2015	NA	-	NA	-	01.06.2016	-	01.06.2016	175
		18.01.2017	07.04.2017/ 29.06.2017	162	09.01.2018	194	15.03.2018	65	18.04.2018	455
5.	Laboratory Kits, Chemical Reagents and Glassware Items	24.03.2017	01.11.2017	222	03.11.2017	2	NA	-	*Pending	737
6.	Operationalisation of 102 Ambulance Service	27.11.2015	29.04.2016	154	29.04.2016	0	07.01.2017	253	11.01.2017	411
7.	Opening/ Running of Pharmacy Shops in Hospital Premises (Jammu Province)	27.11.2015	09.01.2016	43	11.01.2016	2	27.01.2016	16	09.03.2016	103
8.	Procurement of 16 Slices CT Scan Machine	28.01.2017	02.11.2017	278	03.11.2017	1	09.11.2017	6	18.11.2017	294
9.	Procurement of Laboratory Equipments and Mobile Food Testing Van	28.09.2016	24.10.2016	26	NA	-	16.11.2016	-	14.12.2016	77
10.	Finalisation of Rate Contract for Procurement of Blood Bags	23.11.2017	19.02.2018	88	13.06.2018	114	04.07.2018-	21	04.09.2018	285
11.	Empanelment of laboratories for Testing & Analysis of Drugs	14.09.2015	17.11.2015	64	23.11.2015	6	23.11.2015	0	15.12.2015	92

* Status as on 31.03.2019 *(NA: Not made available)*

Appendix - 5.1.2

(Reference paragraph: 5.1; Page: 144)

Details of non-imposition of liquidated damages against the firms for delayed supplies

Sl. No.	Name of the firm	Total No. of POs test-checked	No. of POs where delay noticed	Amount of penalty (₹ in lakh)	Range of days taken to receive supply (cases in days)											
					0-60 days	Value (₹ in lakh)	61-120 days	Value (₹ in lakh)	121-200 days	Value (₹ in lakh)	201-400 days	Value (₹ in lakh)	Above 400 days	Value (₹ in lakh)	Total No. of supplies	Total Value (₹ in lakh)
1.	Bharat Serums & Vaccines Limited	11	3	1.87	19	346.63	6	56.76	0	0	0	0	0	0	**25**	**403.39**
2.	Denis Chem Lab Limited	84	53	103.74	4	4.21	344	295.32	302	175.26	210	217.12	22	12.46	**882**	**704.37**
3.	Modern Laboratories	493	449	146.28	3	1.67	872	844.63	497	407.54	61	24.31	2	0.50	**1435**	**1278.65**
4.	M/s Allied Hospital Traders	129	69	27.42	42	141.52	51	117.45	27	34.39	14	19.17	0	0	**134**	**312.53**
5.	M/s Johnson & Johnson Pvt. Ltd.	554	481	167.21	263	517.02	230	506.16	117	167.35	240	271.34	0	0	**850**	**1461.87**
6.	M/s Lal Surgicals & Pharmaceuticals	89	58	80.04	26	112.20	55	244.52	26	109.83	17	128.13	1	9.63	**125**	**604.31**
7.	M/s National Surgico	138	126	24.57	8	1.24	624	442.89	49	17.59	34	4.83	3	3.94	**718**	**470.49**
8.	M/s Vikrant Life Sciences (P) Ltd.	58	38	21.37	30	177.19	31	148.70	11	19.29	7	2.75	1	0.34	**80**	**348.27**
9.	Theon Pharmaceuticals	61	39	17.36	98	388.31	133	210.41	15	14.49	0	0	2	1.27	**248**	**614.48**
10.	Unicure India Limited	804	563	201.75	524	239.57	1258	730.18	674	467.95	260	285.85	8	2.71	**2724**	**1726.26**
Total		**2421**	**1879**	**791.61**	**1017**	**1929.56**	**3604**	**3597.02**	**1718**	**1413.69**	**843**	**953.50**	**39**	**30.85**	**7221**	**7924.62**

(POs: Purchase Orders)