Medical Health and Family Welfare Department

3.9 Undue benefit to suppliers

The Department failed to impose penalty of ₹ 6.17 crore on non-supply of medicines/drugs resulting in undue benefit to the suppliers coupled with concurrent risk of inadequate patient treatment.

The policy issued (May 2011/ June 2012) by Government of Uttar Pradesh (GoUP) for procurement of drugs/medicines, surgical items and other equipment etc. stipulated inviting tenders by Central Medicine Store, Office of the Director General, Medical and Health, Uttar Pradesh (DGMH) and entering into rate contracts with suppliers for supply of drugs/medicines etc. to various hospitals of the Department. The conditions for supply under the rate contracts of medicine, *inter alia*, included automatic cancellation of any unexecuted order for supply of medicine/drugs after expiry of 60 days of their placement and recovery of liquidated damages at the rate of 20 *per cent* for the year 2015-16 and 15 *per cent*[197] for the year 2016-17 to 2018-19[198] of the value of unexecuted order from the supplier, irrespective of the indenting authority having actually suffered any damage/loss or not on account of non-supply of medicines/drugs.

Scrutiny of records of offices of Chief Medical Officers (CMOs)/Chief Medical Superintendents (CMSs) of 11 districts[199], conducted during August 2016 and September 2017, and information collected subsequently, revealed that 3,339 Purchase Orders (POs) valuing ₹ 37.37 crore placed to 374 suppliers[200] during the period 2015-16 to 2018-19 remained unexecuted even after lapse of 60 days from their placement and, therefore, these POs were automatically cancelled. Accordingly, as per conditions of supply, liquidated damages at the rate of 20 *per cent* (2015-16) and 15 *per cent* (2016-19), on the value of unexecuted orders, amounting to ₹ 6.21 crore (***Appendix-3.5***) were required to be recovered from the suppliers. It was, however, observed that no liquidated damages were recovered (except ₹ 4.47 lakh recovered by CMO, Bareilly from seven suppliers upto October 2020) resulting in undue benefit of ₹ 6.17 crore to the suppliers. Further, risk of the quality of treatment being compromised on account of non-supply of medicines or the patients being compelled to buy medicines from outside could not be ruled out.

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197 Bid documents for rate contracts of medicine for the years 2016-17 and 2017-18 stipulated that if the supply reaches the designated places between 5 PM of the 30th day and upto 60th day from the date of supply, liquidated damages will be levied at 0.5 *per cent* per day for delayed supply respectively upto a maximum of 15 *per cent* irrespective of the fact whether the Government has suffered any damage/loss or not, on account of delay in effecting supply. It was further stipulated that in exceptional cases, indenting authority has every right to receive supply even after expiry of 60 days from the date of purchase order (provided an extension is granted on or before the 60th day) and in such cases; liquidated damages will be levied at 0.5 *per cent* per day but subject to maximum of 20 *per cent* of value of delayed supply. In case of alternate purchase effected due to non-execution, the differential cost incurred or the unexecuted fine, whichever is higher, will be levied. However, bid documents for the years 2016-17 and 2017-18 do not clearly mention the rate of liquidated damages to be applied in case of automatic cancellation of unexecuted orders after 60th day. Hence, recoverable penalty has been calculated in the para at the rate of 15 *per cent*, i.e., the maximum penalty chargeable upto 60th day.

198 Medicines were purchased during 2018-19 on the basis of rate contract executed during 2017-18.

199 Offices of CMO Meerut, CMO Mirzapur, CMO Varanasi, CMO Gonda, CMO Balrampur, CMO Bareilly, CMO Bhadohi, CMO Kushinagar, CMO Siddharthanagar, CMS District Hospital Faizabad and CMS, District Joint Hospital, Chakia,Chandauli.

200 66 suppliers for the year 2015-16, 67 suppliers for the year 2016-17, 110 suppliers for the year 2017-18 and 131 suppliers for the year 2018-19.

The Government accepted the audit observation and stated (April 2019) that as per bid conditions, the penalty was to be recovered by the respective offices of CMOs/CMSs and in view of this, Divisional Additional Directors of the concerned units had been directed to investigate the matter and submit report after fixing responsibility. Government also assured to take action against the responsible officers after receipt of the report. However, status of action taken in the matter was awaited (January 2021), despite reminders (May 2020 and August 2020).

3.10 Unfruitful expenditure on Central Oxygen System

Lackadaisical approach of the department resulted in unfruitful expenditure of ₹ 1.88 crore on procurement of Central Oxygen System, which could not be made operational even after a lapse of more than eight to ten years.

Financial Rules[201] stipulate that the main duty of officers entering into contracts is to ensure that the Government gets fair return for the money to be spent. Further, where it is considered advisable to delay payment till it is ascertained that the machinery is in proper working order, it should be definitely stated in the agreement that the payment of the balance is contingent on the proper working of the machinery.

Scrutiny of records (July 2015 and November 2016) of the office of Superintendent-in-Chief, District Hospital (Male) Agra and information collected subsequently (September 2019) revealed that the Government of Uttar Pradesh sanctioned ₹ 2.76 crore and ₹ 2.70 crore in February 2010 and December 2011 respectively, for procurement of equipment and furnishing material to upgrade the medical facilities in District Hospital (DH), Agra. Accordingly, DH Agra invited tenders in March 2010 and November 2011 and executed agreements with two firms in March 2010 and February 2012 respectively for supply of various equipment and furnishing material, including Central Oxygen Systems (COS). Accordingly, COS for 50 beds and 60 beds (total 110 beds) were supplied by respective firms at the cost of ₹ 0.83 crore (March 2010) and ₹ 1.29 crore (March 2012) respectively.

Audit observed that the agreement executed by DH Agra with the suppliers neither incorporated any express clause for installation and commissioning of the COS nor linked release of payment to suppliers with successful commissioning of the system. The conditions of tender forming part of the agreement simply stipulated that *"the entire responsibility of providing training for use, operation and preventive maintenance of the equipment will be of the suppliers. The equipment will be required to be of high quality. In case of non-receipt of satisfactory quality by the specialist, payment would not be possible."* The lack of definite and express conditions in the agreements, defining duties and responsibilities of the suppliers and also for releasing payment subject to successful commissioning of the COS, facilitated DH Agra to release the entire payment totalling ₹ 2.12 crore[202] to the suppliers after supply and installation of the components, but before making the COS

[201] Appendix XIX of Financial Handbook Volume V (Part-1).
[202] ₹ 0.83 crore and ₹1.29 crore in March 2010 and March 2012 against supplies of 50 beds and 60 beds COS respectively.

Appendix-3.5
Recoverable amount of penalty
(*Reference: Paragraph 3.9*)

(₹ in lakh)

Sl. No.	Name of Unit	Number of purchase orders with delay in excess of 60 days	Amount of purchase order	Recoverable amount of penalty
2015-16				
1	CMO Meerut	63	82.18	16.44
2	CMO Mirzapur	80	27.38	5.48
3	CMO Varanasi	49	53.36	10.67
4	CMO Balrampur	263	859.31	171.86
5	CMO Bareily	78	42.00	8.40
6	CMO Gonda	130	61.44	12.29
7	CMO Bhadohi	NIL	NIL	NIL
8	CMO Kushinagar	24	33.22	6.64
9	CMO Siddharthanagar	NIL	NIL	NIL
10	CMS, District Hospital, Faizabad	50	38.01	7.6
11	CMS, District Joint Hospital, Chakia, Chandauli	48	11.52	2.3
Sub total		**785**	**1208.42**	**241.68**
2016-17				
1	CMO Meerut	49	53.05	7.96
2	CMO Mirzapur	33	31.04	4.65
3	CMO Varanasi	48	49.95	7.49
4	CMO Balrampur	45	44.28	6.64
5	CMO Bareily	85	54.50	8.17
6	CMO Gonda	56	71.85	10.78
7	CMO Bhadohi	113	106.34	15.95
8	CMO Kushinagar	30	73.33	11
9	CMO Siddharthanagar	71	38.93	5.84
10	CMS, District Hospital, Faizabad	26	19.3	2.9
11	CMS, District Joint Hospital, Chakia, Chandauli	87	23.24	3.49
Sub total		**643**	**565.81**	**84.87**
2017-18				
1	CMO Meerut	149	165.58	24.84
2	CMO Mirzapur	23	39.51	5.93
3	CMO Varanasi	27	16.51	2.48
4	CMO Balrampur	234	203	30.45
5	CMO Bareily	25	49.42	7.41
6	CMO Gonda	181	341.39	51.21
7	CMO Bhadohi	226	242.46	36.37
8	CMO Kushinagar	12	4.51	0.68
9	CMO Siddharthanagar	29	28.3	4.24
10	CMS, District Hospital, Faizabad	123	89.66	13.45
11	CMS, District Joint Hospital, Chakia, Chandauli	17	2.91	0.44
Sub-total		**1046**	**1183.25**	**177.5**
2018-19				
1	CMO Meerut	36	46.32	6.95
2	CMO Mirzapur	59	38.27	5.74
3	CMO Gonda	159	210.55	31.58
4	CMO Balrampur	61	32.37	4.86
5	CMO Bareily	Nil	Nil	Nil
6	CMO Bhadohi	205	242.6	36.39
7	CMO Varanasi	8	3.74	0.56
8	CMO Kushinagar	34	43.52	6.53
9	CMO Siddharthanagar	50	32.97	4.95
10	CMS, District Hospital, Faizabad	127	64.41	9.66
11	CMS, District Joint Hospital, Chakia, Chandauli	126	65.23	9.78
Sub-total		**865**	**779.98**	**117**
Grand Total		**3,339**	**3,737.46**	**621.05**