MINISTRY OF HOUSING & LANDS

18.1 Settlement of Dispute – Rs 42.35 million

In November 2005, an amount of Rs 39 million was paid by the Ministry of Housing & Lands (MHL), from funds received from the Ministry of Finance, to Company A (Rs 22 million) and B (Rs 17 million), to settle disputes between the companies and MHL arising during execution of two contracts. Other associated costs incurred amounted to some Rs 3.35 million.

Amount disbursed for settlement of the disputes totalled Rs 42.35 million, compared to the total value of the two contracts of Rs 43.54 million.

Origin of Dispute

The contracts for sewerage works were awarded to Companies A and B, as follows:

<table>
<thead>
<tr>
<th>Company</th>
<th>Site</th>
<th>Contract Value (Rs)</th>
<th>Start Date</th>
<th>Scheduled Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Baie du Tombeau, Terre Rouge, Bois Marchand and Riviere du Rempart</td>
<td>21,872,103</td>
<td>4 June 1993</td>
<td>2 September 1994</td>
</tr>
<tr>
<td>B</td>
<td>Pailles, Dubreuil and Central Flacq</td>
<td>21,673,987</td>
<td>4 June 1993</td>
<td>3 June 1994</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>43,546,090</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

During execution of the contracts, numerous delays occurred for reasons given below:

- Delay by MHL to hand over to the companies some of the sites or parts thereof;
- Increase in scope of works; and
- Late commissioning of the mechanical and electrical equipment in the pumping stations and treatment plants.

The companies subsequently applied for extension of time from September 1994 to August 1997 and claimed for loss and expenses, and associated overrun costs. Since an agreement could not be reached on the claims of both companies, a dispute arose between the companies and MHL. In April 1999, an Arbitrator was appointed by the Supreme Court to resolve the dispute.
**Award by Arbitrator**

In 2000 and 2003, the Arbitrator has, in interim awards in respect of extension of time, ruled that the costs incurred by the companies were payable by the MHL. In October 2005, after negotiations between Government and the companies, the quantum payable to the latter was determined at Rs 39 million.

Had the two contracts for sewerage works, amounting to Rs 43.54 million, been properly planned and sites handed over to the companies on time, the dispute could have been avoided and payments of Rs 42.35 million would not have been warranted.

**Ministry’s Reply**

In view of the complexity and technicality of the matter and given the excessively long period of time involved in the arbitration process (which started in 1999), the Management Audit Bureau (MAB) was approached in May 2005 to carry out a cost benefit analysis with a view to deciding whether it would be advisable to come to a settlement with the Contractors or to continue with the arbitration. The Government, in October 2005, after having considered the balancing exercise carried out by the MAB and the history of the case as well as the risk of paying a near-double of the amounts proposed for a settlement, agreed to negotiate and to settle the case.

**18.2. Project Management**

A public company was executing contracts for construction of housing units and site infrastructure on behalf of Government. As of August 2006, no formal agreement existed between the company and MHL that defined accountability and responsibility in project management. The Service Level Agreement was still not finalised.

Expenditure incurred from capital votes and items of the MHL to finance three low cost housing projects (Firinga Type) are shown in Table 57
Table 57  Low Cost Housing Project

<table>
<thead>
<tr>
<th>Project No</th>
<th>Contractor</th>
<th>Site</th>
<th>Contract Value (Rs)</th>
<th>Actual Payment at August 2006 (Rs)</th>
<th>Status at August 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A</td>
<td>Camp Ithier, New Grove and Grand Bois</td>
<td>96,240,038</td>
<td>100,064,963</td>
<td>Infrastructure works at N. Grove site not completed</td>
</tr>
<tr>
<td>2</td>
<td>B</td>
<td>Dagotiere, Notre Dame and Cottage</td>
<td>87,835,057</td>
<td>71,911,699</td>
<td>Completed</td>
</tr>
<tr>
<td>3</td>
<td>C</td>
<td>Chebel, Mare Tabac and La Gaulette</td>
<td>61,475,179</td>
<td>74,306,326</td>
<td>Completed</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>245,550,274</td>
<td>246,282,988</td>
<td></td>
</tr>
</tbody>
</table>

As of August 2006, a total amount of Rs 246,282,988 was paid by the MHL to the public company for settlement of claims from the Contractors for the three projects.

18.2.1 Payments for extension of time with costs (EOT)

Project 1: EOT of eight to 10.5 months was granted to the Contractor. As a result, payments for EOT amounting to Rs 11,684,897 were effected. Reasons for the granting of EOT, amongst others, were: boundaries not well defined, late approval of colour scheme, additional works requested by the Waste Water Management Authority and construction of retaining wall due to topography of land.

Project 2: EOT of eight months was granted to the Contractor. Consequently, payments for EOT amounting to Rs 4,452,000 had to be made. Reasons for the granting of extension of time, amongst others, were: late possession of site, late response of Consultant’s Surveyor, additional works requested by the Waste Water Management Authority and construction of retaining wall due to topography of land and leveling of roads.

Had preliminary works been completed before award of contract and the projects been properly planned, the extent of extension of time and the related costs could have been reduced to a minimum.

18.2.2 Payments for variations/additional works

In addition to above, variations/additional works totalling Rs 17,403,098, Rs 9,376,930 and Rs 32,907,585 have been paid for Project 1, Project 2 and Project 3 respectively. Included in payment for variations of Project 3, was a sum of Rs 250,000 charged by the Contractor as interest for late payment.
18.2.3 Costs Overrun

Project 1: As of August 2006, total payments made to the Contractor amounted to Rs 100,064,963 compared with contract value of Rs 96,240,038, resulting in costs overrun of Rs 3,824,925.

Project 3: As of August 2006, payments made to the Contractor totalled Rs 74,306,326, compared with contract value of Rs 61,475,179, resulting in costs overrun of Rs 12,831,147.

18.2.4 Specific problem areas of projects

Project 1

- Cavities found at New Grove site
  
  During excavation works at the back of two blocks, several cavities were found by the Contractor. In May 2006, a consultancy firm was awarded contract for the soil investigation and for mapping out the extent of caves within the New Grove site, for the sum of Rs 1,300,000, excluding VAT. The preliminary report submitted by the firm in August 2006 was under examination.

Project 3

- Change of site
  
  - In May 2003, works at La Gaulette site were stopped and, in May 2004, this site was replaced by Camp La Colle site, where 42 housing units were to be constructed.
  
  - Value of works already performed at La Gaulette site totalled Rs 930,118.
  
  - Works at Camp La Colle site were executed as a variation in the contract. At August 2006, the variation works totalled Rs 16,167,465. Approval from the Central Tender Board for this variation was not seen.
  
  - Contrary to Chebel and Mare Tabac sites, where housing units of standard type were constructed, at Camp La Colle site, housing units of varying types, depending on areas, were built.

EOT and variation/additional works were almost recurrent. The MHL needs to set up an efficient monitoring mechanism to identify reasons for EOT and variations/additional works at time of occurrence and not when payments are made. In that respect, costs overrun could be avoided.

The MHL also needs to finalise the Service Level Agreement with the public company for proper accountability and responsibility in project management.
Ministry’s Reply

The Ministry pointed out that all issues raised would most probably be solved once the Service Level Agreement between the Ministry and the public company is signed.

A draft of the Agreement duly vetted by the Attorney General’s Office has been forwarded to the Ministry of Finance and Economic Development for views and reply is still being awaited.