The Cable Contract

Chandran was confused as the project he had worked so hard on, was turning out to be a quagmire. He searched for a way out of the predicament he was in. A graduate from BMS College of Engineering, Bangalore (BMSCE), Chandran was a qualified and licensed electrical contractor. He had recently secured a tender contract at a premier government organization valued at Rs 2.7 lakh. The tender was for 'Replacement of Faulty Cable to Feeder Pillar No 7 for providing power supply to the research blocks, hostels, cabins etc., at National Technical Networks and Laboratories Limited (NTNL) Bhavan, Bangalore - 16'. The contract was floated on a turnkey[i] basis by the Engineering and Technological Maintenance Unit (ETMU) of NTNL on behalf of its Director for its Bangalore Centre. ETMU was one of the many different departments within NTNL that routinely called for tenders. The tender was dated October 25, 2001 and the work order was issued to Chandran on the November 12, 2001. The time allowed to complete the project was 21 days including weekends. No exceptions were permitted as the project was floated on an urgent and priority basis. It was indeed a remarkable achievement for Chandran as this was his first assignment in an organization of that repute. As a new comer to the profession he had earlier undertaken many works that were sub-contracted[ii] to him by other contractors and for small organizations, but had never on his own secured any contracts from bigger organizations like NTNL.

The tendering process at NTNL was the same as that of many government organizations. The tenders valued below Rs 5 lakhs were non-transferable and of 'single cover' system. A bidder needed to submit all the requested details in a single sealed cover that included the price quote. These tenders did not require much experience from the bidders although the bidding contractors both civil and electrical or any one of them, were required to possess government-issued licenses to execute the works; and that depended on the nature of work for which the tender was called. Tenders valued below Rs 25 lakhs required the bidders to possess sufficient expertise and experience in the nature of works awarded. They were again a 'single cover' system but in that single sealed cover, the bidders were required to submit two inner sealed covers; one for technical and the other for price. High-valued tenders also called for a 'Two-Cover' system wherein, the bidder was required to provide two sealed covers separately; one for technical bid and the other for financial bid. The technical bid was basically meant to pre-qualify the bidder and only the ones who were qualified on the technical bid were considered for financial bid later. Successful bidders needed to satisfy conditions set differently for both technical and as well as financial aspects for high-valued tenders.

The tender for 'faulty cable replacement' was valued at less than Rs 3 lakhs and it was advertized in the *Times of India* newspaper in its Bangalore Edition on October 7, 2001, a Sunday. The sale of tender documents costing a non-refundable Rs 200 was open from October 15, 2001 till October 20, 2001. The Earnest Money Deposit (EMD) for the tender was

Prepared by Ravichandran Ramamoorthy, Chief Operating Officer, Centre for Public Policy, Indian Institute of Management Bangalore. Written under the guidance of Professors M.R.Dixit, Abhinandan Jain, and Vijaya Sherry Chand, as part of Alumni Case Writing Workshop, held at Indian Institute of Management, Ahmedabad, in October, 2012.

Rs 13, 500/- and was to be paid by Demand Draft (DD). The completed tender documents along with the financial quote and EMD were to be put in a sealed cover and submitted on or before October 24, 2001. The bids were to be opened in the presence of either the bidders or their representatives on the October 25, 2001 at 3.00pm. The bid that was the lowest was declared to be the bid that won the contract, though at times organizations invoked their discretionary powers and cancelled contracts without assigning any reason whatsoever.

It was not an easy task for Chandran to secure this contract, as getting the tender documents itself was difficult. The personnel-in-charge of issuing the documents were not ready to issue the documents to a newcomer like Chandran and were also very reluctant to share any information during the pre-bid discussions[iii]. However, since it was an open tender they could not do much. Though it was harrowing for Chandran, he was determined to obtain the documents and bid for this project, as he did not have much work on hand. He paid Rs 200 and on October 23, 2001 submitted the completed tender documents in a sealed cover with a DD of Rs 13, 500. It was crucial for him to secure this project, otherwise he risked being without any work professionally and sub-contracts would be the only option. That meant it would take a long time for him to establish himself as an independent contractor if he did not execute projects for organizations like these independently. This contract assumed greater significance to Chandran, now, than ever before.

When the tenders were opened on October 24, 2001 Chandran's quotation was the least much to the dismay of the ETMU personnel and the fellow contractors who bid for this project. His quote was Rs 2, 69, 874.00 only. Chandran could sense unease among the people from ETMU at his successful bidding and he was wondering 'why? He was issued the work order on November 12, 2001 and asked to start the project on or before November 14, 2001.

When it was time to start work, Chandran noticed that the ETMU personnel were not very forthcoming and cooperative on matters related to the project. The personnel in-charge of this project were Ms Jyotsana Singh, the Office Assistant, Mr Raju Nachiketh the Supervisor, Mr Anand the Site Engineer, and Mr Vashisht the Head of Department (HOD) of ETMU. Excavation works for the cable laying started on November 14, itself. After three days of excavating the soil to lay the U G cable, to the shock of Chandran, his contract labourers encountered an undue amount of hardness on the cable-laying path and it became extremely difficult for them to excavate the soil manually from then on.

The Crisis

On the fourth day Chandran inspected closely to find reason for this unusual hardness on the soil. It was found that the left-over concrete of an adjacent building at the time of its roofing works a couple of years back, was carelessly dumped underground. The concrete was discarded all along the path of this cable route much to the chagrin of Chandran. This concrete had hardened during the course of time and subsequently got covered with mud due to acts of nature. As it was his responsibility to verify all aspects of this project, earlier Chandran did check the soil for any unusual hardness by randomly digging along the proposed cable-laying path, only to find none that extraordinary. The concrete had settled a metre below the ground at many places and to his misfortune; the areas he chose to dig randomly to check the hardness of the soil were not among these.

Now Chandran had no option other than to engage tractor-mounted drilling machines to drill and loosen the concrete and manual labourers to excavate the debris. The problem for him was that this would add an additional eight per cent to his overall project cost.

Chandran made no provision for this unexpected cost escalation in the secured bid. He had provided only the customary three per cent for contingency expenses in his bid.

When it came to employing men and machines for a work, Chandran always chose men over machines; if the cost and execution time remained marginally same for both. He always cherished his middle class values and being compassionate, he was in fact happy that he could employ some poor manual labourers for the excavation work in this project and guarantee their livelihood for at least a week. He was also very ethical in his approach towards both personal as well professional lives. Even in his earlier entrepreneurial venture founded jointly with another classmate from BMSCE, he relieved his partner immediately on request who wanted to quit the partnership abruptly at a vulnerable stage for a job that assured growth and safety. This led to an eventual sell-out of that venture. He also gave a letter of employment for the tenure of partnership as requested by his partner since he believed his partner shouldered all the technical responsibilities alone of the venture and hence deserved such a letter. In addition, although he married a top bureaucrat's daughter from an illustrious family, he never asked them for any favours either personally or professionally. Even in the sub-contracted works that he executed for other contractors, he never indulged in sub-standard execution or compromised on the quality of materials used in those works. His professional ethics fetched him more works on sub-contracts though the profit margins were thin and payments stretched for weeks or at times months. Many a times, his friends admired him for his integrity and unflinching ethical mindset. Though not supportive professionally, they were very appreciative of his personal conduct and moral values

Chandran had also negotiated with the local office of a reputed cable manufacturing company M/s Nav Bharath Cables (India) Limited, one of the makers for the required 1.1 KV[iv] LT[v] 240 sq.mm (FRLS[vi] sheathed) XLPE[vii] insulated Multi Core IS[viii] 7098 (Part 1) standard U G cable for supply of 90 metres at a very competitive rate. The rate was at 18 per cent less than the nearest competitor. This was possible only because of his classmate in engineering Mr Murali who was the local Branch Manager of M/s Nav Bharath Cables (India) Limited.

Now to add to his despair, Murali called on Saturday November 17, 2001 in the evening to tell him that the company would not be able to supply the agreed cable in the near future. This was because, the employees at their production facility in Uttarakhand had gone on an indefinite strike fearing job losses due to the installation of new machineries. They also did not allow any of the finished cables to be sent out of the factory. Murali made it clear to Chandran that the discounted rate of 18 per cent was solely based on the assumption that their company would use these new machines for productions and thereby bring down the costs. Murali also could not give a definitive time frame as to when the production would start again because that depended on the outcome of new and fresh negotiations between the management and the employees union.

It was very hard for Chandran to bear this, as he had factored this discount as his major trump card, when he bid for the project. In fact, his bid was lesser by approximately 15 per cent to that of his nearest competitor. When he spoke to the other manufacturer M/s Hindustan General Cables Limited for the same cable specification and quantity to overcome this crisis, the response was not positive. He was told by their branch head that since their next competitor is facing problems with their production, they would supply cables henceforth, to only their regular and long standing clients. He was also told very clearly that, all new buyers would have to pay additionally a premium of around 12 per cent above their cost price if they wanted supply on an urgent basis. The bitter truth for Chandran was that this 12 per cent would be over and above the earlier quoted price, which was 18 per cent higher than the price committed by M/s Nav Bharath Cables (India) limited.

Chandran was certain that it would not be possible to absorb these additional costs without writing off all his profits. He was also sure that, it would eventually leave him with nothing or worse losses, not a worthwhile proposition for him to move ahead. He was contractually obligated to complete the project within the agreed price without abandoning it, assuming all the risks associated with this project, as this was a turnkey project.

ETMU and Chandran

When Chandran conveyed these latest developments to the site engineer Mr Anand on November 19, 2001 a Monday and sought his help, Anand expressed his inability to help him in any way and cited the conditions in the tender. The conditions did not permit any revisit on the finally agreed amount, as that would call for complete cancellation of the tender, reworking of costs, submitting the new proposal, obtaining approval, seeking a fresh budgetary sanction, calling for fresh tenders, bidding, and finally the issual of a new work order, a process that would take six to eight months. Anand made it clear to Chandran that the ETMU did not want to go through this process again, at any cost and explained that the tender had been called urgently, only because, the faulty cable was the feeder which supplied power to all important research centre R-2 that handled turbine research works, hostel blocks H-1 and H-3 that housed the visiting international researchers, and the director's cabin C-6 in the NTNL campus. Any delay was simply unacceptable to ETMU. Anand hinted that if pressed further, ETMU would not hesitate to initiate legal proceedings against the contractor which could include black-listing Chandran from all future works at NTNL. Anand further warned Chandran, "Sir, when we black list you, it may not end with NTNL only and may include all the technical, research, and scientific establishments under the government, so please be warned that you must complete the project on or before December 4, 2001." Chandran was worried and in a confused state of mind went to the cafeteria for coffee in the evening. He wondered all the while what course of action to take. While sipping coffee in solitude he saw the supervisor, Mr Raju Nachiketh coming towards him smiling, exhibiting uncanny warmth.

He asked Chandran "Hello contractor, can I have coffee with you?" for which Chandran replied, "Sir, you are most welcome, and it is my luck that you are here." After a while, when both men finished their coffee, Chandran looked at Raju and said, "Sir, I have been troubled with many issues lately with regard to the cable contract. Can I seek some advice from you?" Raju, after a long pause, replied "Mr Chandran, I have heard from Anand in the afternoon that you face a predicament in the excavation part of the project and you seem to be having problems in sourcing the cable also? Is it true? I am also told that your project cost does not permit you to provide money for both of these within the contracted amount."

Chandran was surprised, but felt partly relieved as this was what precisely he also wanted to share and discuss. Not to waste any moment further he answered, "Sir, I do not know how to overcome this crisis and certainly do not know how to accommodate these additional expenditures. In the bid I had made provisions for manual excavation only, but now I will have to use tractor-mounted drillers. Similarly, I am also not able to get the required 240 sq mm XLPE cable from my suppliers M/s Nav Bharath Cables (India) Limited at the earlier agreed price. Now if I were to work on this project as per my contractual obligation, then, my execution cost will shoot up by 35 per cent when you add these cost escalations. If you subtract my profit margin of 12 per cent from that, then I would be working under a loss. Please bear in mind that I would be working on this project without any income at all, despite knowing well that I would be making only losses in the end. Further the accounts department would deduct on the final payment a Security Deposit (SD) of Rs 13, 490 at five per cent, Rs 10, 792 as Sales Tax (ST) at four per cent, and Rs 5, 396as Income Tax (IT) on Tax Deducted at Source (TDS) at two per cent on the total project cost. In addition, I do not know how I will absorb the other additional expenditures like administrative, travel, and incidental expenses."

After a while, Raju looked deeply at Chandran and said, "Look Mr Chandran, I can understand your problems. If you listen to me carefully, then you may execute this project successfully and make more profits than even your original estimate. Can you pay attention to me? Because what I am going to tell you now is very important and said in good faith, and hence must remain confidential!" Chandran was excited, what with words like 'more profits than even the original estimate' coming from one of the important person in ETMU with whom he had to work along for this project.

The reason for Raju's importance came from the system of payments in the organization. Like many Government organizations, after the completion of a project, the personnel from ETMU take possession of the entire inventory. They, then acknowledge the completion of project by writing all the details in a MB[ix] book with signatures certifying the veracity and completion. The signatories for this certification include the site engineer, then the supervisor, followed by the head of the department and finally the contractor in exactly the same order. After the completion of these formalities, they send the completion certificate to the accounts department. Only then the payments were released. In addition, both the site engineer and the supervisor regularly interacted with the contractor on all aspects related to the project, be it the technical issues, or approval of materials used, or liaising with other departments, monitoring, and certifying adherence to the tender stipulations by the contractor at periodical intervals, etc.

Insider Information

Raju took him to a corner near G7, the northern gate of NTNL, an isolated stretch of path and told him, "Let me come straight to the point. We never wanted to give you the tender documents, because we never wanted you to bid. We wanted only Mr Damodhar (a fellow contractor empanelled in the list of contractors in the organization) to bid and secure this project. It is time you knew the reason, why?"

Raju looked around cautiously and continued,

> Damodhar had hinted to us at the time of one casual pre-bid discussion that he is in possession of a used 84 metres long 240 sq mm XLPE UG cable in a good condition. The cable it seems, is without any fault and sourced clandestinely from the storehouse come scrapyard[x] of the State Electricity Board (SEB). He made it clear to us that if we allow this cable for use in the project, albeit secretively, he can bring down the material cost of the cable by as high as 70 per cent. In fact, he suggested that we could all share this additional saving among ourselves at a mutually agreed percentage.

> Also, he proposed that we allow only two metres of the cable to be buried underneath the soil in circular[xi] rings at both the ends, instead of the mandatory requirement of six meters. This, he reasoned, can bring in an additional saving of 100 per cent of cost on the eight meters of cable that would be saved, which again he hinted, can be shared.
>
> He also requested us, that the bricks[xii] which are to be placed over the cable on all along its path be allowed of substandard quality, again a proposal he explained, can bring in an additional saving. Looking at all this, we decided among ourselves, me, the site engineer and the HOD, since in this project all materials are going to be buried underneath the soil at a depth of 1.5 meters and a chance of failure is only a small probability after all the testing; we may allow Damodhar to succeed the bid. Assuming, even if the cable does fail, then my experience tells me, it would be a cable burst only. In that case, the burst will only rupture the cable, thus help in automatically destroying the evidence of a used cable, which is good for all concerned. Hence, we thought we may safely allow Damodhar to win this bid and accordingly spoke to our regular contractors to form a Ring[xiii] and allow Damodhar to succeed, but you had spoilt this game plan by winning the bid.

Chandran was taken aback. He was in desperate need of funds. When he applied to NTNL for this work he knew the payment would be cleared immediately on completion of work and when certified of the same. Premier organizations like NTNL issued work orders only after they obtained budgetary sanctions from the government for the works they tendered. This meant the money was already provided for by the government and hence would be released immediately to the contractors on completion. Chandran applied for this tender on the assumption that he could complete the project on time and use the profits to manage his immediate and pressing domestic expenses. Additionally, this contract could also help him to establish himself as an independent contractor of repute. A married man with a six-year old daughter, domestic commitments, and pending payments from the sub-contracted works put a lot of pressure on his professional and family life. He had already borrowed a substantial amount of money on interest and invested in the sub-contracted works that he executed for other big time contractors. The borrowings were necessitated on account of his belief that timely payments to his labourers and suppliers must never be delayed. The payments for those completed sub-contracted works were due from the big time contractors. They could take some more time; at least few weeks if not months.

Another worrisome factor was the delay in delivery of materials to the site. Since NTNL campus was adjacent to the arterial road of Bangalore that connected the Airport to the inner parts of the city, every VVIP movement of the visiting dignitaries to the city delayed the deliveries. To his misfortune, the VVIP movements were very frequent and the traffic cops did not allow any vehicular movements, particularly heavy goods vehicles (HGVs) in daytime and the material suppliers and NTNL both did not allow materials to be supplied in the nights. This again meant deliveries were not under his control.

The next day as he parked his scooter Chandran saw a group of contractors who had their on-going tender projects on the huge NTNL campus engaged in an animated discussion near the parking lot meant for four wheelers. He walked up to them and before he could introduce himself a man asked "Sir, are you not Chandran, the new contractor to ETMU and NTNL?" when Chandran nodded his head the man replied, "I am Damodhar and Welcome to NTNL. How is your work? Sir, I heard you are running into problems with the project, Is it true?” Chandran was surprised and left wondering, “Everyone seems to know my problems here!” He did not know a way out to salvage the project that was slowly slipping from his control with the deadline fast approaching.

ENDNOTES

[i] A contractor undertakes all activities necessary for the successful completion of a project including purchase of material, permits, plans, and execution and turns over the completed project to the owner assuming all risks till completion

[ii] Works or supply of materials either in full or part assigned to a third party by the party to an original contract. This nature of sub-contracts are usually very prevalent in engineering, construction and information technology projects and executed as required in the original contract

[iii] An informal but structured discussions that are largely about the project scope, character and expectations of the potential client. It could also include timeline constraints and assess the required capabilities of a contractor.

[iv] Kilo Volts

[v] Low Tension

[vi] Flame Retardance with reduced halogen evolution and Low Smoke

[vii] Cross linked Polyethylene (for insulation)

[viii] Bureau of Indian Standards (BIS) standardization

[ix] Measurement Book, a book where details of the materials and works are recorded, a practice followed from the British era

[x] As far as the SEB, it is a salvage waste and scrap. But pieces like these are normally removed by lower level employees out of a burst UG cable of a longer length by cutting and testing them for their usability at regular intervals without the knowledge of their superiors

[xi] A practice to allow provisions for extra length of cable at the ends for future use

[xii] normally, as a precautionary measure, bricks are placed over the U G cable all along, so as to not puncture the cables while digging in the future

[xiii] An informal cartel, where it is agreed beforehand who would succeed a tender bid and accordingly rates are quoted by the pre-chosen winner and the signed blank tender copies from the other bidders are obtained beforehand