



भारतसरकार
Government of India
विद्युतमंत्रालय
Ministry of Power
(NHPC Section)
F. No. 11/35/2020-NHPC(Part.I)

Shram Shakti Bhawan, Rafi Marg,
New Delhi, dated 16th March, 2022

Office Memorandum

Subject: Guidelines for early settlement of disputes and to minimize the arbitral claims/disputes in Hydro-Power Sector – Reg.

Contingent liabilities are not conducive for financial health of the organisations. They hamper the professional working relationship between Developers and Contractors; and in the process adversely impact the timely completion of projects.

It has been observed that there are an increasing number of Arbitration cases pending due to contractual disputes arising between CPSEs of Ministry of Power and contractors in the execution of Hydro-power Projects. To address the issue, a three member Committee was constituted by Ministry of Power vide Office Order dated 9th March, 2021, to analyse all pending as well as decided Arbitration cases of the last 5 years, in the light of relevant provisions, laid down in respective contractual/ bidding documents, NITI Aayog Guidelines and the Arbitration and Reconciliation Act 1996 and to suggest remedial measures as well as amendments in Contract and bidding documents for minimising disputes and also for settling the disputes expeditiously. After deliberations on the report of the Committee, it has been decided to issue the following guidelines for compliance and necessary action by all CPSEs implementing Hydro-Power Projects:

- 1. Contractor's Eligibility:** There is a need to increase the number of good contractors in the sector. This can be done by prescribing eligibility on financial strength and requisite technical competency of the participating companies, rather than merely experience in earlier development of Hydro Power Projects. Therefore, financially sound contractors, who may not have earlier executed hydro projects specifically, be also allowed to participate in bids invited for hydro projects with the condition that they hire engineers competent in hydro power development and shall actually deploy them during construction.
- 2. Selection of Arbitrator(s):** There is a need to ensure that Arbitrators are selected through a careful process and with due diligence. The arbitrators who are indulging in unfair practices need to be identified and dropped from future engagements. The instances of unjustified arbitration awards may be shared with the court and other authorities/agencies.

3. Contractors who repeatedly raise unjustified or inflated claims and engage in frivolous litigation/arbitrations, should be identified and may be debarred from future projects. However, it must also to be ensured that contractors are not unnecessarily harassed or refused fair dues. Further, if a contractor does not bring his disputed claim within a reasonable timeline before the *Independent Engineer (IE)* or *Conciliation Committee of Independent Experts (CCIE)* or to any other appropriate forum and deliberately raises his claim after prolonged delay then it may also be considered as a reason for adverse inference regarding and debaring of the claim.

4. Provision of Independent Engineer (IE)/ Conciliation Committee of Independent Experts (CCIE): The mechanism of IE and CCIE issued by Ministry of Power vide Office Memoranda Nos. 15-18/1/2020-HYDEL-II(MOP) dated 27th September 2021 and 11/22/2021-ThII dated 29th December, 2021 respectively may be suitably incorporated in all future Contracts for dispute avoidance/ resolution. Also, these mechanisms may be utilised to resolve existing/ past disputes with the consent of contractor. A Sub-Committee of Board may be constituted to analyze the ongoing disputes with the contractors to resolve them expeditiously through these mechanisms.

5. Appeal on Arbitral Award: Appeal may not be raised against an arbitral award by the CPSUs if the award is just and fair. Frivolous appeals place an unnecessary burden the public exchequer. Those decisions of the Arbitral award where there is no merit in further challenging the award, may be accepted forthwith.

6. Delegation of power to Engineer In Charge/ Head of Plant: Appropriate powers should be delegated to EIC (Engineer-in-Charge) of the project to settle the disputes at initial level itself. If EIC does not take or delays the decision to avoid responsibility, then adverse entry be made in his/her Annual Performance Appraisal Report. Indecisive officers should not be assigned charge of EIC. Also, at the same time, following measures may be taken to encourage EIC for taking prompt decisions:

- Allegations without any evidence/ proof against the EIC, should not be entertained.
- In case of frivolous allegations against EIC or any other officer, suitable action may be taken against the complainant.

7. Digitization of records & Real Time data recording: CPSEs must adopt real time data recording and maintain constant communication with contractor. They should maintain real-time and transparent documentation of all men and machinery deployed at the site to avoid false claims in the future. The major documents which need to be online recorded are as under- :

- Correspondence (letters, submittals, approvals, rejections, etc.)
- Memos
- Minutes of Meetings
- Programmes (Schedules)
- Diaries (establishing timing of an event)
- Hindrance Register
- Payment Records
- Inspection Records
- Daily log of available man, machine and material at site
- Progress Reports (Daily/ Weekly/ Monthly)

Response to the letters of contractor should be sent as soon as possible. The replies should address the points raised by the contractor quoting relevant contract provisions. A suitable monitoring system may be developed to ensure high level oversight on the tracking of correspondences and their responses.

8 The following may also be included in the Contract documents:

i. Procedure of payment of idling cost to be part of contract documents: Cost of "under utilization/ idling of contractor's resources" for the events entitling Extension of Time (EOT) be assessed and compensated through a well-established mechanism to be clearly specified in the Contract. It may be verified that the idle resources are not utilized by the contractor anywhere else. These should be readily available and verifiable at site and equipment should be in working condition to be eligible for idling claims.

ii. Risk Sharing Methodology: The Risk sharing methodology between the contractor and the employer may be clearly defined in the contract documents. A separate document called 'Risk Register' should be a part of the Bid/ contract documents. The 'Risk Register' should incorporate the assignments of all possible risks to the relevant party who is in the best position to handle and mitigate the risk.

iii. Settlement of disputes through Fast Track Procedure: Provision for settlement of disputes through Fast Track Procedure as provided under Section 29B (Fast track procedure) of The Arbitration and Conciliation (Amendment) Act, 2015 may be made in the Contract Agreement in future as a mechanism for resolution of disputes. (Please refer to para 4 of this OM)

9. CPSEs are advised to take necessary action for incorporating the aforesaid provisions in all their future contracts/ bidding documents and to also amend the provisions in existing contracts with mutual consent of both the parties.

This issues with the approval of the Hon'ble Minister of Power and New & Renewable Energy.



(R. P. Pradhan)
Director (H-II)

1. Chairperson, CEA
2. Chairman BBMB/DVC
3. CMDs of all the CPSEs under Ministry of Power