Urgent

PUBLIC WORKS DEPARTMENT
GOVT OF NCT OF DELHI
OFFICE OF THE ENGINEER –IN-CHIEF
12th FLOOR MSO BUILDING, NEW DELHI

No.E-in-chief/Works/Arbitration/2020-21/ 1980 Dated: 5/7/21.

CIRCULAR

Sub: Defending arbitration cases and challenging arbitral awards.

Please find enclosed herewith a copy of O.M. No.f/SE(TLC)Arb. Case/2019-20/07 dated 14-1-2021 issued by the CPWD, Govt of India relating to instructions for defending and challenging arbitral awards. Contents of Office Memorandum which is advisory in nature is also applicable in the PWD, GNCTD of Delhi, which is following CPWD Work Manual , CPWD code etc.

All the Officers of the PWD who are entrusted with defending arbitration cases , are advised to follow the instructions contained in the above OM strictly, to safeguard the interest of the Govt.

Before submitting the file to Office of the Engineer-in-Chief for acceptance of Arbitration award, a certificate should also be recorded in the concerned file that arbitration case has been defended effectively by the concerned Executive Engineer before the Sole Arbitrator with proper CSF. Concerned Division and Zone should also ensure that ,proposal for acceptance of arbitration award is submitted to the Office of the Engineer-in-Chief , before 2 weeks of due date of payment without interest.

This issues with the prior approval of Engineer-in-Chief (PWD).

DIRECTOR (WORKS)

To

1. All the Principal Chief Engineers/Chief Engineers, PWD, GNCTD
2. All the Superintendent Engineers, PWD, GNCTD
3. All the Executive Engineers, PWD , GNCTD

सत्यमेव जयते

भारत सरकार
महानिदेशालय, के.लो.नि.वि.
स.वि.एवं गु. संगठन, क्यू. ए. सह. टी.एल.सी.
417-ए, निर्माण भवन, नई दिल्ली -110011.
टेलीफैक्स – 011 23062339

CPWD

No.4/SE (TLC)/Arb.case/2019-20/07 Dated: 14/01/2021

कार्यालय ज्ञापन

विषय: Defending arbitration cases and challenging arbitral awards.

1. An arbitral award can be challenged only on the limited grounds specified in Section 34(2) of the Arbitration and Conciliation Act, 1996, within 3 months from the date of receipt of the award. These grounds include the following:
   (i) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his case.
   (ii) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
   (iii) The arbitral award is in conflict with the public policy of India.

2. The public policy of India has been interpreted in many cases by the hon'ble Apex Court. Useful reference may be made to cases like Associate Builders vs DDA, Ssangyong Engineering vs NHAI, ONGC Limited vs Saw Pipes Limited etc.

3. The hon'ble Apex Court has held that:
   (i) A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence.
   (ii) Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. (Associate Builders vs DDA)

4. Therefore, the arbitration cases should be defended effectively before the arbitrator with proper CSF rather than challenging awards later. Generally, the claims like damages due to prolongation of contract, escalation, loss of profit etc. are denied in CSF without rebutting the details of calculations of the amount claimed. Without prejudice to the specific denial, the CSF should include judicious calculation of minimum admissible amount while pointing out the factual errors in the calculation of claims. The CSF should also include a statement of reply to claimant's letters in the following sample form.

Statement of reply to claimant's letters

S No	Claimant's letters			Respondent's reply		
	Exhibit	Date	Brief content	Reply	Date	Brief content
1	C1	07.01.2021	Work delayed. Pay compensation.	R1	08.01.2021	Work delayed by you. No compensation is payable.
2	C2	12.01.2021	Work hindered due to non-availability of structural drawing.	nil	nil	Reply already covered in letter dated 08.01.2021 that work has been suspended.

This issue with the approval of Director General, CPWD.

(महेश चन्द सिंघल)
कार्यपालक अभियन्ता(टी.एल.सी.)

सेवामें,

(के.लो.नि.वि. वेबसाइट के माध्यम से)

समस्त स्पेशल महानिदेशक, अतिरिक्त महानिदेशक, मुख्य अभियंता, अधीक्षण अभियंता एवं कार्यपालक अभियंता