

F. No. 11/12/2021-Th.II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 7th January, 2022

To

1. The Chief Secretaries of All the State Government / UTs (As per list)
2. The Chairperson, Central Electricity Authority
3. The Chairman, Central Water Commission
4. CMDs of all the CPSUs under Ministry of Power

Subject: Invitation of Expression of Interest (Eoi) for empanelment of Independent Experts for constitution of Conciliation Committees for dispute resolution of contractual disputes in respect of the projects implemented by CPSEs / Statutory bodies under administrative control of Ministry of Power – regarding.

Sir,

With the approval of Hon'ble Union Minister for Power and New & Renewable Energy, a dispute resolution mechanism through conciliation by Conciliation Committee of Independent Experts (hereinafter CCIEs) for contractual disputes in respect of the projects implemented by CPSUs / Statutory bodies under administrative control of Ministry of Power, Govt. of India, has been formulated. A copy of the guidelines are enclosed at Annex-I, which is self-explanatory.

2. In this regard, Expression of Interest is hereby invited from eligible candidates for empanelment of Independent Experts for constitution of the CCIEs in accordance with the terms and conditions mentioned in this Ministry's Notification dated 07.01.2022 enclosed at Annex-II. It is requested that the enclosed Notification may kindly be given wide publicity in order to ensure maximum participation of the eligible participants.

Encls: as above.

Yours faithfully,



(Vikrant S. Dhillon)

Deputy Director

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Copy to:

1. Department of Financial Services, Ministry of Finance, Govt. of India with request to give wide publicity to the enclosed Notification amongst the Commercial Banks / Financial Institutions / NBFCs under them.
2. Ministry of New & Renewable Energy with request to circulate the Notification amongst the CPSUs under its administrative control.

Copy also to:

In-Charge, NIC Cell, MoP with request to upload the Notification on home-page / front-page of the website of Ministry of Power urgently and to ensure that it remains on the home-page for at least 30 days.

F. No. 11/22/2021-Th.II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg,
New Delhi, Dated 29th December, 2021

OFFICE MEMORANDUM

Subject: Dispute Resolution through Conciliation for Contractual Disputes in Projects implemented by CPSUs / Statutory Bodies under the administrative control of Ministry of Power – Constitution of Conciliation Committee of Independent Experts (CCIE) – Reg.

CPSUs / Statutory Bodies (Developer) executing power projects, have been raising concerns that the present modalities of dispute resolution are not adequate to expeditiously and effectively address the disputes between the Developer and the Contractors. The delay in resolution of such contractual disputes has been identified as one of the major reasons impacting timely completion of power sector projects. The existing mechanism of dispute resolution through Dispute Resolution Boards or Arbitration Tribunal often takes considerable time, which leads to sub-optimal cash flow for the contractors and in time and cost overrun of the projects.

In this context, a Committee of Board Level Officers of CPSUs was constituted to study the field level issues and the difficulties in resolving the issues. The Committee submitted its report, which was deliberated upon in this Ministry in consultation with Central Electricity Authority and the CPSUs. It was observed that several disputes have been arising under the contracts which are not only involving exorbitant legal costs, but also causing diversion of precious human resources of both parties involved in disputes. Early amicable resolution of these disputes is in the interest of all the stakeholders.

2. After careful consideration, Government of India in the Ministry Power have decided to constitute Conciliation Committees of Independent Experts (CCIE), for settlement of disputes arising in contracts of CPSUs / Statutory Bodies executing power projects. There shall be three CCIEs. Each CCIE shall have three members having high level of integrity and proven track record. The Members shall be appointed from amongst the following categories:-

- I. Former Officers of the rank of Secretary / Additional Secretary to the Govt. of India.
- II. Sector Experts having substantial domain knowledge of project development and O&M of power projects.
- III. Experts in Finance with experience in senior positions of Financial Institutions.

Provided that one of the members in each CCIE should be from the category mentioned at 2(II) above i.e. Sector Expert having substantial domain knowledge of project development and O&M of power projects.



3. Broad Terms and Conditions:

3.1 The panel of the Independent Experts shall remain valid for a period of three years from the date of its formation and the validity of panel can be extended but not beyond total tenure of 5 years. Depending on the response from the contesting parties and the work-load, the number of panels may be suitably increased from time to time.

3.2 Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee per sitting. In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding. The conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months. In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings. The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Developer or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work. All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Developer CPSE/Statutory Body initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.

3.3. There shall not be any conflict of interest for the members of the CCIE due to their past assignments. Individuals appointed as CCIE members shall submit an undertaking in this regard. It shall be ensured that they have not been engaged for providing any services to any of the parties i.e. either Developer organisation or the Contractor in the last five years.

3.4. The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point before the committee with regard to their respective stance and view the exercise in the spirit of conciliation / settlement.

4. Standard Operating Procedure:

4.1 On receipt of a reference from the Contractor for conciliation of dispute, the concerned Head of Project (Developer) shall send a communication within 7 working days thereby inviting the Contractor to depute a team of their representatives to interact with the Contract Department (Developer). The template of the communication is enclosed at Annex, which may be modified as per requirement.

4.2 The Contract Department (Developer) will obtain the details and examine the correspondence of either parties relating to disputes, normally within 30 days. They may hold discussions with the team of Contractor and Head of Project to crystallise the issues; prepare the agenda containing the gist on each dispute and set up suitable meetings in an effort to

resolve the issue internally. The present internal mechanism in the CPSU / Statutory Body may be fully exercised to resolve the issue even before attempting conciliation by CCIE.

4.3 Once a conciliation request has been raised by the contractor, within 30 days the same shall be referred to the CCIE in the event of the matter remaining unresolved internally. The CMD/Board of the Developer may suitably decide an amount involved in the dispute below which it would not go into the exercise of conciliation after weighing the nature and quantum of disputes in the concerned organization.

4.4 The Developer will also be free to suggest the option of resolution of disputes by conciliation in case a dispute has arisen. The contractor may select any one of the three CCIEs after leaving out those CCIEs which are unavailable due to work load or any other reason. A CCIE will normally be considered unavailable if it is handling cases to such an extent that there would be avoidable delay in the event of more cases being taken up by the same CCIE.

4.5 The work of maintaining details of CCIE, its members, work load and allocation of a dispute to CCIE will be entrusted to CEA.

5. The possibility of non-availability of any one of the members of CCIE in any proceedings cannot be ruled out. As such, the Committee comprising the other two members shall be competent to proceed in the matter. The proceedings of the Committee shall not be vitiated if one of the three members of CCIE is not present in the deliberations of the Committee. When the parties sign the settlement agreement, at least two conciliators shall authenticate the same. Such conciliation proceedings shall be considered valid and the settlement agreement will be binding on the parties.

6. In case of any disagreement during execution of contracts, it is expected that the parties will take up the matter first with the Dispute Avoidance Mechanism (through Independent Engineer), wherever the option is available. In case of its failure, the parties may refer the matter further to the Conciliation Committee. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle and dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of Courts. However, the option of Arbitration would not be available once the conciliation mechanism has been exercised. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996

7. After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.

8. Once the conciliation process succeeds in reaching a settlement agreement, at the level of the Conciliation Committee, further legal proceedings by the CPSU/ Statutory Body/