

DELHI DEVELOPMENT AUTHORITY
E.M.'s Office


No.: EM-2(06)2002/Cir.-(Arbn.)/DDA/Part/1104

Date : 21-05-09

CIRCULAR No. 636

SUB. : **Introduction of Clause "Settlement of Disputes & Arbitration" in DDA Works Contract.**

Competent Authority is pleased to introduce the **Clause of "Settlement of Disputes & Arbitration" in DDA Works Contracts** as per enclosed Annexure. All N.I.T. approving authorities are directed to ensure that in all future N.I.Ts., to be approved by them, the aforesaid Clause will also form part of the Contract Document, with effect from the date of issue of this Circular.


(M.S. NIGAM)
Director-(Works)

Copy to :

1. All C.Es. (Civil/ Elect.) -- For kind information & further circulation among the Officers concerned.
2. C.V.O. -- - (do) -
3. C.A.O. -- - (do) -
4. Project-Manager-(Fly.) -- - (do) -
5. Director-(System) -- - (do) -
6. Director-(Hort.)/N-&-S -- - (do) -
7. Director-(MM) -- - (do) -
8. Director-(PR) -- For information please
9. E.Os. - I, II & III -- For information.
10. E.E.-(Coordination) -- For information.
11. Dy.-C.A.O.-(Plan) -- For information.
12. Sr.-R.O.-(RTI) -- For information.
13. Hindi-Officer -- For information & issue of Hindi Version.

Copy also forwarded to :

14. P.S. to - VC, EM, FM -- For kind information of the letters.
15. Registrar, Delhi-High-Court -- In pursuance of Directions of Hon'ble-High-Court -
in Case No. CS (OS)42/2003


E.O.-III to E.M.

**CLAUSE OF WORKS AGREEMENT FOR
"SETTLEMENT OF DISPUTES & ARBITRATION"**

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship *or* materials used on the work *or* as to any other question, claim, right, matter *or* things whatsoever, in any way arising out of *or* relating to the contract, designs, drawings, specifications, estimates, instructions, orders *or* these conditions *or* otherwise concerning the works *or* the execution *or* failure to execute the same whether arising during the progress of the work *or* after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter :-

- i) If the contractor considers any work demanded of him to be outside the requirements of the contract *or* disputes any drawings, record *or* decision given in writing by the Engineer-in-charge on any matter in connection with *or* arising out of the contract *or* carrying out of the work, to be unacceptable, he shall promptly, within 15 days request the Superintending-Engineer in writing for written instruction *or* decision. Thereupon, the Superintending-Engineer shall give his written instructions *or* decision within a period of one month from the receipt of the contractor's letter.

If the Superintending-Engineer fails to give his instructions *or* decision in writing within the aforesaid period *or* if the contractor is dissatisfied with the instructions *or* decision of the Superintending-Engineer, the contractor may, within 15 days of the receipt of Superintending-Engineer's decision, appeal to the Chief-Engineer, who shall afford an opportunity to the contractor to be heard, if the latter so desires and to offer evidence in support of his appeal. The Chief-Engineer shall give his decision within 30 days of receipt of Contractor's Appeal. If, the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Engineer-Member for appointment of Arbitrator, failing which, the said decision shall be final, binding and conclusive and not referable to adjudication by the arbitrator.

- ii) Except where the decision has become final, binding and conclusive in terms of Sub-Para-(i) above, disputes *or* difference shall be referred for adjudication through arbitration by a Sole-Arbitrator, who shall be a technical person having the knowledge and experience of the trade, appointed by the Engineer-Member, DDA. It will be no objection to any such appointment that the arbitrator so appointed is a DDA employee that he had to deal with the matter to which the contract relates and that in the course of his duties as DDA employee, he has expressed his views in all *or* any of the matters in dispute of difference. If the arbitrator so appointed is unable *or* unwilling to act *or* resigns his appointment *or* vacates his office due to any reason whatsoever, another sole-arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the Party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute alongwith the notice for appointment of the arbitrator and giving the reference to the rejection by the Chief-Engineer of the appeal.

It is also a term of this contract that no person other than a person appointed by the Engineer-Member, DDA, as aforesaid, should act as arbitrator and, if, for any reason that is not possible, the matter shall not be referred to the arbitration at all. It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for the payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Delhi Development Authority shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act 1996 (26 of 1996) *or* any statutory modifications *or* re-enactment thereof and the rules made there-under and for the time being in force shall apply to the arbitration proceedings under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and, in all cases, where the total amount of the claims by any party exceeds Rs.1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues the notice to both the parties calling them to submit their statement-of-claims and counter-statement-of-claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator, shall, if required, to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs *or* any part thereof shall be paid and fix *or* settle the amount of costs to be so paid.

- (B) The decision of the Superintending-Engineer regarding the quantum of reduction as well as justification thereof in respect of rates for sub-standard work which may be decided to be accepted will be final and would not be open to arbitration.

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