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HIMACHAL PRADESH
PUBLIC WORKS DEPARTMENT

No. PW/CTR/ 32-20/Enlistment rules./2022 13924-14028

Dated:- 6/8/22

To

The Superintending Engineer,
1st Electrical Circle HPPWD,
Kasumpti, Shimla-9.

The Superintending Engineer,
2nd Electrical Circle, HPPWD,
Dharamshala (Kangra) .

The Superintending Engineer,
3rd Electrical Circle, HPPWD,
Mandi.

Subject:- Striking off Clause 10 CC from Contractor Agreement
PWD form No. 7/8 for Electrical Works in HPPWD.

A meeting of the designated committee constituted vide this office orders No. PW-CTR-32-20-Enlistment Rules 2022 -12983-93 dated 27.7.22 has been convened on 04.08.2022 to deliberate upon the grievances of the Himachal Electrical Contractors Welfare Association (SZ) on the subject cited above and decide upon the admissibility of the escalation claims of electrical contractors.

In this context, the Minutes of the Meeting are enclosed for information and taking further necessary action with respect to admissibility of the escalation clauses and claims related to electrical works in HPPWD.

You are, therefore requested to adhere to the decisions taken in the meeting and also to issue necessary instruction to the field offices working your control.

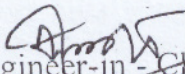
Encl. As above

Engineer-in - Chief,
HPPWD Shimla-2

Copy along with minutes of meeting is forwarded to the following:-

Fgr.
Chakr
JE(IT) 06/08/2022
upload on official
website.
JE(IT)

1. The Principal Secretary (PW) to the Govt., of H.P for information.
2. All the Chief Engineer in HPPWD for information.
3. All the Superintending Engineers/ Executive Engineer in HPPWD for information.
4. The Executive Engineer, (IT) for information. He is requested to upload the same on the departmental website.


Engineer-in-Chief,
HPPWD Shimla-2.

Himachal Pradesh Public Works Department, Nirman Bhawan Nigam Vihar Shimla-2.

Minutes of the Meeting

A meeting of the designated committee constituted vide Engineer-in-Chief HPPWD office order No. PW-CTR-32-20-Enlistment Rules 2022 -12983-93 dated 27.7.22. has been convened in the office chamber of Engineer-in-Chief HPPWD Shimla-2 on 04.08.2022 at 11.00 AM to deliberate upon the grievances of the electrical contractors, mainly regarding the issue of denial of escalation clauses in the contract agreements related to electrical works in HPPWD and decide upon the admissibility of the escalation claims of electrical contractors.

The following members attended the meeting:-

1.	Engineer-in-Chief, HPPWD	Chairman
2.	Chief Engineer (SZ) HPPWD	Member
3.	SE (D-III) HPPWD	Member
4.	SE 1 st Electrical Circle HPPWD Shimla	Member
5.	SE 2 nd Electrical Circle HPPWD Dharamsala	Member
6.	Joint Controller(F&A), HPPWD	Member
7.	Deputy Dist. Attorney (Law) HPPWD	Member

At the outset, it was apprised to the committee about various representations being received from the Himachal Electrical Contractors Welfare Association, South Zone (Regd.) raising therein the issue of denial of escalation clauses in the agreements relating to electrical works being executed by them since the year 2013-14. As per record, the detail of various representations made by the above association is as under:-

Sr. No.	Reference no. & date	To whom addressed
1	ECWA-E-in-C-101-110 dated 3.10.2017	E-in-C HPPWD
2	HECWA-SZ-265-271 dated 25.7.2019	CE (SZ) HPPWD
3	HECWA(SZ)-101-107 dated 17.11.2021	E-in-C HPPWD
4	HECWA(SZ)-108-109 dated 25.2.2022	Hon'ble CM (HP)
5	HECWA(SZ)-113-115 dated 11.5.2022	E-in-C HPPWD
6	HECWA(SZ)-110-112 dated 12.4.2022	Secy(PW) to the GoHP

In these representations, they have submitted that electrical works can only be executed with the progress of civil work and in case of any delay in civil work; the electrical work itself gets delayed. There is provision in the agreements for paying cost escalation for the civil works, but the same has been denied in the electrical works since long. Further, in case of delay in execution of civil works, electrical contractors are forced to complete their works without any payment for escalation in cost of materials and labour which is affecting their working and efficiency.

From the perusal of the various representations, the committee observed that the following issues which come into the picture:-

1. To incorporate escalation clauses 10C, 10CA & 10CC in contract agreements for electrical works which are being deleted since 2014.
2. To re-consider the claims of electrical contractors under clause 10 CC where this clause was in force in the contract agreements prior to year 2014 which were denied by electrical wing of HPPWD on the basis of CE (SZ) proceeding dated 16.6.2015.
3. To review the deleted escalation clauses during the period 2014-2021 and re-consider the submitted claims of electrical contractors.

In this context, it was further apprised to the committee that, this office through Chief Engineer (SZ) has taken up the matter with the concerned Electrical SEs and has obtained their clarifications on the above issues which is on record. Further the Chief Engineer (SZ) has also submitted a detailed report to Engineer-in-Chief HPPWD vide his letter No. 12401-12404 dated 25.7.2022 which is based upon the clarifications submitted by the concerned Electrical SEs.

The issue wise detail and comments submitted by the SEs of electrical wing are summarised in tabular form as under:-

Sr. no.	Issue/point raised by this office (as per representations of the electrical contractors association)	Reply submitted by SE Elec. 1 st Circle, Kasumpti Shimla	Reply submitted by SE Elec. 2 nd Circle Dharamsala	Remarks
(a)	As to whether clause 10 CC is applicable for tenders being floated currently by the Electrical wing of the department or not?	Escalation clauses are being deleted by the electrical wing of the department since 2014 as per decision vide this office letter No. 2271-76 dated 07.10.2013.	Yes	There is no uniformity regarding applicability of the 10CC in the Electrical Wing
(b)	If not so, what are the reasons for striking off Clause 10 CC from Contract Agreements for Electrical works in HPPWD?	Reasons for deleting this clause was felt by this wing due to non availability of funds as mentioned in the letter no. 2271-76 dated 07.10.2013.	NA	As above
(c)	As to whether the clause 10 CC was ever applicable in electrical works before it was struck off? When the same was struck off and what were the reasons?	As reported by SE Electrical Shimla, escalation clause 10 CC was in the contracts earlier to its deletion. However, non availability of funds and non insertion of the pre-defined values for material and labour component in the tender document have been reported to be the reasons for deletion.	Applicable	As above
(d)	Clear recommendations regarding applicability and insertion of clauses 10C, 10CA & 10CC in contract agreements for electrical works.	SE Electrical has firmly recommended the provision of paying escalation for electrical works and has also recommended to incorporate pre-determined values for material and labour components in respect of electrical works in the bid document/GCC as recommended/suggested by the committee constituted earlier during the year 2018 to study the admissibility of the 10 CC claims of electrical contractors.	The escalation clauses are applicable as per provisions contained in the standard bid document comprehensively.	As above.
(e)	Clear recommendations regarding to re-consider the claims of electrical contractors under clause 10 CC where this clause was in force in the contract agreements prior to year 2014 which were denied by electrical wing of HPPWD on the basis of CE (SZ) proceeding dated 16.6.2015 as raised/pointed out by the electrical contractors association.	In this context, SE Electrical has submitted that the proceeding of the Chief Engineer (SZ) dated 16.6.2015 has denied claim under 10 CC for electrical works.(copy attached)	NA	As above. However, the proceeding of the Chief Engineer (SZ) dated 16.6.2015 refers to dispute in single tender case.
(f)	Clear recommendations regarding to review the deleted escalation clauses during the period 2014-2021 and re-consider the submitted claims of electrical contractors as raised/pointed out by the electrical contractors association.	As recommended by SE Electrical, the claims can be made admissible from the date of implementation of CPWD works manual and procedures in HPPWD or approval of grant of 10CC claim by the competent authority.	NA	There is no uniformity regarding applicability of the 10CC in the Electrical Wing
(g)	If any other issue has remained uncovered, then it may also be checked from the various letters/representations from the contractors association mentioned herein above and clear recommendations be also given.	- Nil -	NA	There is no uniformity regarding applicability of the 10CC in the Electrical Wing

The committee, on the perusal of the point wise reply submitted by SEs Electrical wing of the department, observed that there is no uniformity regarding the implementation of the escalation clauses in the two electrical circles of the electrical wing. SE Dharamsala has submitted explicitly the continuation of escalation clauses in the agreements for electrical works and has apprised that escalation clauses were never deleted at any point of time in Dharamsala circle. In the meeting, he also apprised that there is no such case lying pending for want of redressal/payment on account of escalation claim under the circle.

The SE Electrical Circle Shimla apprised that in Shimla circle, the then SE vide his letter no. PW-SE-Elect. CTR/2013-2014 -2271-76 dated 07.10.2013 had taken decision regarding deletion of the escalation clauses from the bid documents. The plea taken in the said letter for deletion of the escalation clauses has been mentioned as paucity of sufficient funds being received from the Civil wing of the department to carry out the electrical works which are sufficient only to clear the contractual liability of electrical work done at site and there is no scope of giving compensation on account of clause 10 CC to the electrical contractors. The committee, after scrutiny of the said decision by the then SE Electrical found that the decision taken by the SE concerned was illogical, arbitrary and without approval of the Competent authority and without intimation to the concerned Chief Engineer and Engineer-in-Chief. Factually, the matter of paucity of the funds was required to be raised separately instead of deleting the escalation clauses & grab the fundamental right of the contractors which subsequently has heaved the grievances amongst the contractors.

The committee also found that even thereafter, the escalation claims submitted by the electrical contractors under this circle have been denied by the concerned electrical Divisions on the basis of the decision taken in the meeting held by committee on 16.6.2015 chaired by the then Chief Engineer (SZ) which refers to dispute under 10 CC claim of a particular work named "Construction of New Distt. Court Complex at Chakker Shimla (SH: Providing EI) executed under Agreement no. 151 for the year 2009-10" wherein the committee had found that there was no provision of 10CC in the agreement for electrical work and accordingly had given its decision regarding non admissibility of 10 CC claim of the concerned contractor at that time. The SE Electrical Circle Shimla apprised that in the said case, escalation claim of the contractor has been allowed by the Arbitrator and also by the Hon'ble Court thereafter. It was also apprised by the SE Electrical Shimla that in some other cases, the arbitrators have allowed the escalation claims of the contractor's inspite of the fact that escalation clauses were deleted in the agreements. Thus, the committee also observed that the non uniformity in the applicability of escalation clauses by some of the electrical divisions under Shimla circle has raised the unnecessary litigation.

In this context, the committee also discussed the version of SE Electrical 1st Circle Shimla who has firmly recommended the provision of paying escalation for electrical works and has also recommended to incorporate pre-determined values for material and labour components in respect of electrical works in the bid document/GCC as recommended /suggested by the committee constituted earlier during the year 2018 to study the admissibility of the 10 CC claims of electrical contractors. While deciding the admissibility of 10 CC clause, the said committee has also quoted the reference of CPWD manual 2007 Section 32.10 which provides provision of payment of 10 CC claim for electrical works. Similar provisions have also been provided in CPWD Works Manual 2014 Section 33.10. The above sections of CPWD works manuals provide reference of working out the pre-determined values for material and labour component in respect of electrical works for paying escalation. The pre-determined values for material and labour component of the electrical works for the operation of Clause 10 CC as decided by the said committee are as under:-

Sr. No.	Component of work	Material %age	Labour %age
1	Electrical works	75%	25%
2	Fire fighting /Fire alarm/Central heating/HAVC works	80%	20%

The committee also studied the revised Bid document/GCC for state works which is based on CPWD works manual after adoption of the CPWD works manual by the department which provides provision of escalation clauses for civil and electrical works. However, pre-determined values for electrical works have not been inserted in the schedule F of the bid document/GCC for operation of clause 10 CC. The committee also studied the approved bid document before adoption of the CPWD works manual which has been used for drawing the agreement(s) by the electrical wing for electrical works and found that it provides stipulation of escalation clauses.

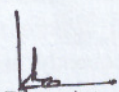
In view of the aforesaid findings by the committee, the committee unanimously has decided the following:-

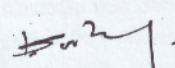
- (i) Escalation clauses shall be the part and parcel of the contract agreements of electrical works.
- (ii) The department shall allow and consider the escalation claims of the contractors with prospective effect w.e.f. 05.08.2022. All other earlier work contracts prior to 05.08.2022 shall be governed by the terms and conditions of the respective agreements.
- (iii) For operation of 10 CC claims, pre-determined values shall be as under:-

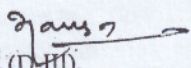
Sr. No.	Component of work	Material %age	Labour %age
1	Electrical works	75%	25%
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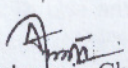
The above pre-determined values shall be inserted in the schedule F of the Bid document/GCC under reference of clause 10 CC in future agreements.

The meeting ended with a vote of thanks to the chair.

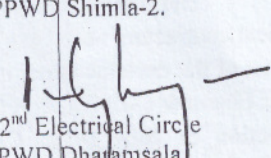

Dy. Distt. Attorney (Law)
HPPWD Shimla-2.



SE 1st Electrical Circle
HPPWD Shimla-9


SE (D-II),
HPPWD Shimla-2


Engineer-in-Chief,
HP.PWD. Shimla-2,


Joint Controller(F&A),
HPPWD Shimla-2.


SE 2nd Electrical Circle
HPPWD Dharamsala


Chief Engineer (SZ)
HPPWD Shimla-2.