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**HIMACHAL PRADESH
PUBLIC WORKS DEPARTMENT**

No. PW/CTR/32-20/Genl. Inst/2015-4074-4102 Dated:- 18/5/16
To

All the Chief Engineers,
in HPPWD,
All the Superintending Engineers,
in HPPWD.

Subject: - Amicable settlement with the contractors to avoid arbitration claims of contractors under PMGSY works.

In this context, please refer to this office letter No. PW-29-CTR-29-637/2015-13913-18 dated 31/12/2015(copy enclosed) vide which the clarifications on price escalation under PMGSY works was sought from Govt. The case was under consideration of the Govt. which was placed before the CM.M on 04/03/2016. The Govt. has now conveyed the decision on the issue vide letter No. PBW (B)F(5)/2/2011-L dated 15/03/2016, copy enclosed for ready reference.

You are requested to look into the matter personally and direct all the concerned field officers working under your control to adhere the instructions in the letter & spirit and take action accordingly and send the cases to competent authority for amicable settlement.

Any departure of these instructions will be viewed seriously.

D.A. As above.

Engineer-in Chief,
HPPWD, Shimla-2.

Copy forwarded for information and necessary action to :-

1. The Additional Chief Secretary (PW) to the Government of HP w.r t his office letter referred to above for information please.
2. The Engineer-in Chief, QC&D, HPPWD, Shimla-1.
3. The Chief Engineers PMGSY HPPWD Shimla for information please.
4. The Executive Engineer (IT) for uploading the same on the Departmental website.

Engineer-in-Chief,
HPPWD, Shimla-2.

HIMACHAL PRADESH
PUBLIC WORKS DEPARTMENT

PW-29-CTR-29-637/2015 13913-18

Dated: 31/12/15

From:

Engineer-in-Chief,
HPPWD, Shimla-2.

To

Mr. Addl. Chief Secretary (PW),
to the Govt. of HP, Shimla.

Subject: -

**Amicable settlement with contractors to avoid arbitration
claims of contractors under PMGSY works.**

Sir,

Due to promulgation of Arbitration and Conciliation Ordinance 2015, Superintending Engineer, Arbitration and other arbitrators functioning as regular Superintending Engineer(s), had made a reference to this office pointing out that u/s. 12(1)b, the Fifth Schedule of the ibid Act it has added as under: -

“the following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators”.

Arbitrator's relationship with the parties or counsel

(1) the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.”

Thus as per this new provision, any employee in past or present of the department gains disqualification to act as arbitrator. Therefore upon raising of objection(s) by the contractors in the pending arbitration proceedings matter was referred to this office for further guidelines. Pertaining to Public Works department total 119 cases were found pending with Superintending Engineer (Arbitration) and there are other cases also which are pending before serving Superintending Engineer(s) as well as retired Chief Engineers. To combat this situation it was decided to convene state level meeting on 14.12.2015 in which all the Zonal Chief Engineer(s) and Superintending Engineer(s) participated. Division wise, Circle wise, Zonal wise detail of each arbitration case pending with said Arbitrators pertaining to their Zones was discussed at length so as to encourage the contractors for amicable settlement qua their respective claims.

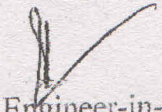
During this discussion the basic issue which arose is that in PMGSY contracts there is no provision for settlement of prolongation claims as provided in other contracts under clause 10cc i.e. price escalation. The Superintending Engineer(s) in one voice pointed out that out of these pending arbitration cases majority of the cases are those cases in which the department failed to provide hindrance free site to the contractor(s) within stipulated period due to non-availability of NOC under FCA and non-availability of land for want of gift deeds. The contractors have thus rightly been stopped to execute the work due to non-availability of site which as such leads to delay

in execution and now these prolongation claims of price escalation, idle labour and machinery for want of existence of clause 10cc under the contract agreement possibility of amicable settlement is a remotest chance. Various formula were discussed at length in this meeting to settle these claims however lastly to "determine price variation", the members deliberated at length and unanimously suggested as under: -

- (I) That in those cases where contractor(s) was deprived hindrance free site and it lead to delay in execution, for determination of price variation date of bid opening will be the base for price analysis index formula.
- (II) That period for which such variation will be payable shall reckon after expiry of stipulated period and to determine this it has to be seen as for how much period the delay is on the part of department till hindrance free site was made available. Thereafter the price quarterly index payable during the execution of work period by the contractor has to be applied e.g. If out of 2 years stipulated period, the work has been completed in 4-years and out of these two years extended period if for one year the delay is on the part of department and one year the delay is on the part of contractor, then the price variation shall be available to the contractor for the period for which delay had occurred on the part of department i.e. 1 year and for determining this price variation, the date of bid opening shall be base for the price index and the price index during the period when work has been executed shall be made the base as per clause 10 CC of Standard Bidding Document. No other formula except the formula provided under 10cc despite non-existence of clause shall be the best available option to the department to settle such claims. However the contractor will not be entitled for price variation of stipulated period of completion as per agreement.


It is, therefore, requested to kindly consider and examine this proposal at the Govt. level, in consultation with Law Department, if required, because there is no escalation clause in the Bidding Document. The escalation clause which is approved by Government in Form 8 of Standard Bidding Document can be considered for determining the escalation of cost (copy enclosed), so that out of these pending cases before Department appointed arbitrators including Superintending Engineer (Arbitration) one time amicable settlement in at least 50% of these cases/claims are made under amicable settlement to avoid huge financial liability upon the State Exchequer.

Yours faithfully,


of
Engineer-in-chief,
H.P.PWD, Shimla-2

Copy forwarded for favour of information and necessary action to:-

1. All the Zonal Chief Engineer(s) working in HPPWD.
2. The Joint Director, (Law) HPPWD, Shimla-2.


of
Engineer-in-chief,
H.P.PWD, Shimla-2