

## CHAPTER – 12

### SETTLEMENT OF DISPUTES, ARBITRATION AND CONCILIATION

#### **12. Introduction**

12.1 Normally there should not be any scope of dispute between the Purchaser and the supplier/contractor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the Purchaser and supplier/contractor. Therefore, the General Conditions of Contract and Special Conditions of the contracts contain the dispute redressal and Arbitration provision for settlement of disputes/differences binding on both parties. The proceedings in respect of the dispute resolution mechanism and arbitration are explained below:

#### **12.2 Dispute Redressal**

12.2.1 Resolution of disputes: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the contract or after its completion, or its cancellation/termination, as the case may be, shall be referred by the Contractor to the "Director, DPS" through "Notice of Dispute."

12.2.2 Provided that no such notice shall be served later than 15 days from incidence of dispute or cancellation/termination order served upon the contractor or after the date of validity of the contract. The Director, DPS shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the constitution of dispute redress committee hereinafter referred to as "DRC" to the Contractor.

12.2.3 The DRC shall be constituted, as far as possible within 30 days and it shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of the contract. The DRC shall have three members, one officer from DPS Purchase Unit, one officer from DPS Accounts Wing and one officer from a constituent DAE Unit.

12.2.3 If the parties agree to settle the dispute, they shall draw up and sign a written settlement agreement duly signed by the parties including the DRC members. When the parties sign the settlement agreement, it shall be final and binding on the parties.

12.2.4 Till finalisation of the DRC recommendation, the parties shall not initiate any arbitral or judicial proceedings in respect of all disputes which are subject matter of the DRC proceedings.

12.2.5 The committee proceedings shall be terminated as per the provisions of Section 76 of 'The Arbitration and Conciliation (Amendment) Act, 2015' as amended from time to time.

#### **12.3 Arbitration**

12.3.1 Demand for Arbitration

- 12.3.1 In the event of any unsettled issues or dispute(s) or difference(s) between the parties hereto as to the execution of this contract or the respective rights and liabilities of the parties specified in the contract on any matter in question, or any payment to which the Contractor may claim to be entitled to remain unresolved even after submission of final recommendation of DRC, the contractor within 30 days from the date of the recommendation of the DRC on the disputed matters shall demand in writing that the dispute or difference be referred to arbitration.
- 12.3.2 (a) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the purchaser, shall be referred to arbitration and other matters shall not be included in the reference.
- 12.3.2 (b) The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act, 2015 as amended from time to time, if they agree for such waiver in writing, after dispute having arisen between them, in the format given under Annexure I of these conditions.
- 12.3.3 (a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Purchaser.
- 12.3.3 (b) The claimant shall submit his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.
- 12.3.3 (c) The Purchaser shall submit its defence statement and counter claim(s), if any, within a period of 30 days of receipt of copy of claims from the Arbitral Tribunal, unless otherwise extension has been granted by the Arbitral Tribunal.
- 12.3.3 (d) No new claim shall be added during arbitral proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by the Arbitral Tribunal having due regard to the delay in making it.
- 12.3.3 (e) If the Contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 5 working days of receiving the intimation from the Purchaser that the final payment is made to the contractor, he/they will be deemed to have accepted the payment and waived his/their claim(s) and the Purchaser shall be discharged and released of all liabilities under the contract in respect of these claims.
- 12.3.4 Place of Arbitration
- 12.3.4.1 The place of arbitration would be at the place from where the contract was issued or Mumbai as decided by the Director, DPS.
- 12.3.5 Obligation during Pendency of the Arbitration
- 12.3.5.1 Work under the contract shall, unless otherwise directed by the Purchaser, continue during the arbitration proceedings, and no payment due or payable by the Purchaser shall be withheld on account of such proceedings, provided, however, it shall be open for the

Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

12.3.6 Appointment of Arbitrator

12.3.6.1 Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off

12.3.6.1.1 In cases where the total value of all claims in question added together does not exceed ₹ 25,00,000/- (Rupees Twenty Five Lakh), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of DPS/DAE Unit/DAE not below the rank of the Purchase Officer /Deputy Controller of Accounts, nominated by the Director, DPS. The sole arbitrator shall be appointed by Director, DPS within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

12.3.6.1.2 In cases not covered by the Clause 12.3.6.1.1, the Arbitral Tribunal shall consist of a panel of three Gazetted Officers of DPS/DAE Unit/DAE not below the rank of Deputy Director P & S/Joint Controller of Finance and Accounts or two Gazetted Officers of DPS/DAE unit/DAE not below the rank of Deputy Director, P & S/Regional Director, P & S /Joint Controller of Finance and Accounts and a retired Officer of DPS/DAE unit/DAE, retired not below the rank of Joint Director, P & S/Joint Controller of Finance and Accounts/Regional Director, P & S/Scientist 'H', working in DAE as the arbitrators. For this purpose, Director, DPS will send a panel of at least four (4) names of Gazetted Officers of one or more Units of the DAE/DAE which may also include the name(s) of retired Officer(s) empanelled to work as DPS Arbitrator to the Contractor within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

12.3.6.1.3 Contractor will be asked to suggest to Director, DPS at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of such request by Director, DPS. The Director, DPS shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. The Director, DPS shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees.

12.3.6.1.4 The serving officer working in Arbitral Tribunal in the ongoing arbitration cases as per clause 12.3.6.1.1 and clause 12.3.6.1.2 above, can continue as arbitrator in the Arbitral Tribunal even after his retirement.

12.3.6.2 Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off

12.3.6.2.1 In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Officer of DPS/DAE Unit/DAE, retired not below the rank of Joint Director, P & S/Joint Controller of Finance and Accounts/Regional Director, P & S/Scientist 'H', as the arbitrator. For this purpose, the Director, DPS will send a panel of at least four (4) names of the retired Officers empanelled to work as DPS Arbitrator duly indicating their

retirement dates to the Contractor within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

- 12.3.6.2.1.1 Contractor will be asked to suggest to Director, DPS at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Director, DPS. The Director, DPS shall appoint at least one out of them as the arbitrator.
- 12.3.6.2.2 In cases where the total value of all claims in question added together exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Officer of DPS/DAE Unit/DAE, retired not below the rank of Joint Director, P & S/Joint Controller of Finance and Accounts/Regional Director, P & S/Scientist 'H', as the arbitrators. For this purpose, the Director, DPS will send a panel of at least four (4) names of retired Officers empanelled to work as DPS Arbitrator duly indicating their retirement date to the Contractor within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.
- 12.3.6.2.2.1 The Contractor will be asked to suggest to the Director, DPS at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request by the Director, DPS. The Director, DPS shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. The Director, DPS shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees.
- 12.3.7 If one or more of the arbitrators appointed as above refuses to act as an arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the Director, DPS fails to act without undue delay, the Director, DPS shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Arbitral Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).
- 12.3.8 An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.
- 12.3.9 While appointing arbitrator(s) under Sub-Clause 12.3.6.1.1, 12.3.6.1.2, 12.3.6.2.1&12.3.6.2.2 above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as DPS official(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per annexure- II shall be taken from the Arbitrators also. The proceedings of the Arbitral tribunal or the award made by such Arbitral Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.
- 12.3.10 Powers of Arbitral Tribunal

- 12.3.10.1 The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The proceedings shall normally be conducted on the basis of documents and written statements.
- 12.3.10.2 Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of the Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Arbitral Tribunal to deal with the dispute(s) submitted to the arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of Arbitral Tribunal should be provided to both the parties.
- 12.3.11 Qualification of Arbitrator (s)
- (a) Serving Gazetted Officers of not below Purchase Officer, DPS/Deputy Controller of Accounts, DAE Grade level.
  - (b) Retired Officers not below Joint Director, P & S /Joint Controller of Finance and Accounts/Regional Director, P &S,/Scientist H Grade level, one year after his date of retirement.
  - (c) Age of arbitrator at the time of appointment shall be below 70 years.
- 12.3.12 Arbitral Award
- 12.3.12.1 The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom.
- 12.3.12.2 A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of an Arbitral Tribunal and interpretation of a specific point of award to Arbitral Tribunal within 30 days of receipt of the award.
- 12.3.12.3 A party may apply to Arbitral Tribunal within 30 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- 12.3.12.4 In case of the Arbitral Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Arbitral Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 12.3.12.5 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
- 12.3.12.6 The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s) and the fees shall be borne equally by both the parties, provided parties sign an agreement in the format given at Annexure I to these condition after/ while referring these disputes to Arbitration. Further, the fee payable to the

arbitrator(s) shall be as per schedule IV of the Arbitration and Conciliation (Amendment) Act, 2015 and as amended from time to time, irrespective of the fact whether the arbitrator(s) is/are appointed by the Purchaser or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.

12.3.13 Subject to the provisions of the aforesaid Arbitration and Conciliation (Amendment) Act, 2015 and as amended from time to time and the rules there under and relevant para of General Conditions of Contract (GCC) and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.