To

All AOGEs


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A copy of Ministry of Defence, Department of Military Affairs D(Works-II), Sena Bhawan, letter No. 13600/Arb/Gen/E8/340/2020/DMA(W-II) dated 25.11.2020 along with its enclosures received under HQr letter No. 18001/Works/Misc/Vol.III/E-979 dated 16.02.2021 on the above subject is forwarded herewith for information, guidance and compliance please.

Encl: As Above
No. 18001/Works/Misc/Vol.III/E-979

Dated: 16.02.2021

To

All Regional PCsDA/CsDA

Subject: Guidelines for Constitution of MoD Panel of Arbitrators.

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Please find enclosed a copy of Ministry of Defence, Department of Military Affairs D(Works-II), Sena Bhawan, New Delhi letter No. 13600/Arb/Gen/E8/340/2020/DMA (W-II) dated 25.11.2020, on above subject for information and necessary action.

Encl.-As above.

Sr. Accounts Officer (Works)
To,

Engineer-in-Chief
E-in-C's Branch, Kashmir House
New Delhi

Subject: Guidelines for Constitution of MoD Panel of Arbitrators:

I am directed to refer E-in-C's Branch File No. 13600/Arb/Gen/E8 on the subject mentioned above and convey the sanction of President for formulation of the detailed guidelines for "Constitution of MoD Panel of Arbitrators".

2. The detailed guidelines along with Annexures is enclosed herewith.

3. This issues with the concurrence of Def (Fin) vide No. 149/Fin/Wks-III dated 09.11.2020.

Encl: As above

Copy to:

(i) O/o CGDA, Ulan Batar Road, Delhi Cant, New Delhi
(ii) MoD (Fin)/Works-III, B-Block, New Delhi
GUIDELINES FOR CONSTITUTION OF MoD PANEL OF ARBITRATORS

1. The guidelines enumerated in the succeeding paragraphs are for constituting a common Panel of Arbitrators for Military Engineer Services (MES) and other Departments under Ministry of Defence (MoD) henceforth called the MoD Panel of Arbitrators (MoD PoA).

Definitions

2. Governing Committee means the Committee comprising of:-
   (a) Engineer-in-Chief (Chairperson)
   (b) Rep of MoD/DMA-JS (Works)
   (c) Jt DG (Contracts) of E-in-C’s Branch (in his/her absence, Senior Most Jt. DG (Contracts) of MES)

3. Appointing Authority means the authority mentioned in the contract agreement for appointment of Arbitrator(s).


Scope of MoD PoA

5. The list of empanelled arbitrators will be available for nomination as member/Presiding Officer of Arbitral Tribunal or Sole Arbitrator as the case may be for disputes arising in the works contracts of Military Engineer Services under Ministry of Defence. Other Services and Departments under Ministry of Defence desirous of utilising the services of the Panel of Arbitrators may do so after getting approval from DMA/MoD.

Procedure for Empanelment

6. Following procedure will be followed for empanelment of Arbitrators in the MoD PoA:-
(a) Empanelment will be carried out by inviting applications through open advertisement in leading national dailies and websites of the concerned department. The advertisement will be initiated by MES under DMA/MoD and shall specify, amongst others, the eligibility criteria, conditions of empanelment including period of empanelment and fee structure. The form for application for empanelment is enclosed at Appendix 'A'.

(b) Persons who wish to get empanelled as arbitrators shall submit their application in the prescribed format to the addressee as mentioned in the notification with all relevant documents attached as Annexures duly marked. One set of the application alongwith complete enclosures shall also be sent on the email.

(c) The applicants will be shortlisted based on fulfilment of the essential eligibility criteria given in succeeding Para(s). The Governing Committee will have sole discretion over basis and criteria for shortlisting of eligible applicants.

(d) The Governing Committee will approve the MoD PoA comprising maximum of 25 arbitrators from amongst the shortlisted applicants who qualify the eligibility criteria.

Eligibility Criteria

7. A person with minimum Bachelor's degree in Engineering (preferably in Civil/Electrical/Mechanical Branch of Engineering) with following qualifications shall be eligible for applying for empanelment:

(a) Retired MES/Army Officer (retired not below the functional rank of CE (QS&C)/Chief Engineer/equivalent rank of SAG (corresponding to Level 14 of Pay Matrix as per VII CPC) /Brig) having done appointment of Zonal CE/CCE/ in MES or should have at least two years' experience in handling technical matters of major / infrastructure works in MES in the functional rank not below CE (QS&C)/Chief Engineer /equivalent rank of SAG (corresponding to Level 14 of Pay Matrix as per VII CPC) /Brig.

OR

Retired officer of Central Government Organisation of core engineering sector having held the functional post not below the rank of Chief Engineer (SAG) (corresponding to Level 14 of Pay Matrix as per VII CPC) and having held the field
appointment of project execution in that rank (corresponding to Level 14 of Pay Matrix as per VII CPC).

OR

Retired officer of Central PSU of core engineering sector having held the post not below the rank of Chairman/Chief Executive Officer/Chief General Manager.

(b) Retired Army officer should have preferably served in DGNP/MES/BRO.

(c) Should not have been under disability affecting discharge of duty by virtue of statutory provision or by reason of public policy or dismissal or removal from service as a result of any disciplinary proceeding or offence involving moral turpitude.

(d) Should not have been convicted or facing criminal prosecution.

(e) Should not be more than 72 years of age as on date of empanelment. No renewal of empanelment shall be done after 75 years of age.

(f) Should preferably have experience of conducting or associated with at least one adhoc or institutional Arbitration.

(g) Should be physically and mentally fit to act as arbitrator. For this purpose, appropriate Medical Certificate from Authorized Medical Attendant (AMA) not below the rank of CMO or from any CGHS/ECHS empanelled Hospital shall be submitted by the applicant.

8. In case large number of applications are received, preference may be given to the applicants having more experience of conducting adhoc or institutional arbitration.

Separate Standing Panel Of Department

9. MES has Standing Panel of Arbitrators, who are serving officers, sanctioned by MoD. They will automatically form part of MoD PoA. These serving officers of MES on the Standing Panel of Arbitrators will be assigned arbitration cases only on the receipt of written consent from both the parties in terms of the provision under Section 12(5) of the ACA. If either party does not furnish such written consent, then the arbitrators will be appointed from the MoD PoA so created.

10. For MES Contracts concluded by CWE/GE(I)/AGE(I), a Panel of serving officers of MES not below the rank of Director/Col/Director (Contracts) (having done at least one executive tenure of minimum two years or having at least one executive tenure of
minimum two years or having at least two years experience of handling contract matters) may be finalized by CEs Command/ADGs. This Panel will be published by the CEs Command/ADGs on the MES website to be updated every six months. They will be appointed as arbitrators by CEs Command/ADGs as per the guidelines in MES Manual on Contracts subject to receipt of written consent from both the parties in terms of the proviso under Section 12 (5) of the ACA. If either party does not give written consent, arbitrator will be appointed from the MoD PoA being created now.

11. As per Para 28.6 of MES Manual on Contracts, CE Zone is the appointing authority in case of CWE/GE AGE(I) contracts. The aforesaid Para may be amended to cater for the above provisions whereby CE Command/ADG will be the appointing authority for appointment of Arbitrator in CWE/GE/AGE(I) contracts.

**Conditions of Engagement/Empanelment**

12. Conditions for engagement of the MoD PoA are as follows:-

(a) The initial empanelment will be for three years with effect from date of issue of letter of empanelment by the Governing Committee. After the expiry of three years of empanelment, the empanelled persons shall apply for renewal of empanelment by submitting fresh application. The period of empanelment may be extended one time for a period of two years thereafter solely at the discretion of Governing Committee on the terms and conditions as decide by the Committee at the time of renewal. Renewal of empanelment shall however be subject to conditions laid down in Para 7 above.

(b) An arbitrator must not delegate his duties to any person.

(c) The ACA including all amendments thereto as issued from time to time by the Government of India shall be the governing Law.

(d) The disclosure of Conflict of Interest (potential of actual) is mandatory before acceptance of every reference. The appointee/nominee will disclose if there is any conflict of interest direct or remote in the subject matter of the dispute or in the parties before each such reference.

(e) Principles of strict confidentiality shall be applicable except for the disclosure as per law.

(f) The Governing Committee shall be kept informed of any development that may affect any prospective or present references of arbitration.
(g) All payments to the arbitrator(s) will be online/cheque.

(h) The Governing Committee reserves the right to add or delete the name of any person to and from the Panel of Arbitrators.

Allocation of Arbitration Cases

13. For contracts of value upto and including Rs 100 crore, the Appointing Authority shall appoint a Sole Arbitrator from the MoD PoA, including the serving officers of MES who are on Standing Panel of Arbitrators, in accordance with the terms and conditions of the contract and subject to conditions stated in para 9 hereinbefore. However, a Serving Officer of MES may not ordinarily be assigned arbitration case in respect of contracts having value more than Rs 50 crore.

14. For contracts of value more than Rs 100 crore, the disputes shall be adjudicated through an Arbitration Tribunal consisting of three arbitrators. For this, the Appointing Authority will nominate one arbitrator from the MoD PoA and one arbitrator will be nominated by the other party from the same MoD PoA. Both the nominated arbitrators shall then select the Presiding Arbitrator from the respective Panel.

15. The Appointing Authority shall consider nature of disputes and expertise/experience of the empanelled arbitrators while nominating them to conduct arbitration proceedings.

16. Generally not more than seven cases shall be allocated to the empanelled persons of MoD PoA in one calendar year except for the four Arbitrators in the existing Standing Panel of E-in-C’s Branch and the Panel of Serving Officers of MES, who shall be allocated number of cases as in the MES Manual on Contracts.

17. The Appointing Authority shall also have the right to terminate the mandate of arbitrator and transfer the case to any other Arbitrator from the Standing Panel and/or forfeit the remaining fee if at any stage it is revealed that the applicant has knowingly submitted a false declaration in his/her application for empanelment. In such cases, the Governing Committee shall have the right to remove such Arbitrator(s) from the Standing Panel and to initiate criminal proceedings against such person under the relevant provisions of Indian Penal Code and/or Prevention of Corruption Act.

18. In cases covered under Para 17 above, the Arbitrator shall be liable to return to the Appointing Authority all records pertaining to arbitration proceedings before him.
Fee Structure

19. Fees for Arbitration Tribunal shall be as laid down in accordance with Section 11(14) of ACA including amendments thereto from time to time. The fee structure is enclosed herewith as Appendix 'B'. However less fees can be paid if both the parties and the Arbitration Tribunal agree for the same. Fees prescribed or as agreed will be for the entire Tribunal irrespective of number of Arbitrators and shall be shared equally amongst the Arbitrators.

20. Payment of fee will be made in four instalments as under:-

(a) 25% of fee after exchange of statements of claims and pleadings-in-defence of both the parties.
(b) 25% of the fee after first effective hearing after exchange of documents as mentioned in Para 20 (a) above.
(c) 25% of the fee after conclusion of hearing.
(d) 25% of the fee after making of arbitral award and issue of notice thereof but prior to publishing of award.

21. Expenses other than fees of the Arbitration Tribunal shall be as per Appendix 'C'.

22. The Governing Committee may frame such rules as may be necessary after taking into consideration the fees in the Fourth Schedule of ACA 1996 as amended through Arbitration & Conciliation (Amendment) Act 2015, Arbitration & Conciliation (Amendment) Act 2019 or thereafter from time to time.

23. The fees and other expenses as mentioned vide Para 19 to 21 hereinbefore shall be borne equally by the parties unless the Arbitrator/Arbitration Tribunal or the Arbitration Award provides for a different apportionment.

24. No fees shall be paid to the arbitrator(s) who are in service. Such arbitrators may proceed with arbitration hearing after superannuation with the express agreement of both the parties. However no fee will be payable in such case even if the complete arbitral proceedings is concluded and award is published after superannuation. The agreement of both the parties for continuation of mandate of arbitrator after his/her superannuation shall be subject to this condition.
Duties and Responsibilities of Arbitral Tribunal

25. The empanelled Arbitrators will have to settle the referred arbitration cases in a time bound manner in accordance with the provision of the Arbitration & Conciliation Act, 1996 as amended by the Arbitration & Conciliation (Amendment) Act, 2015 (No. 3 of 2016) and the Arbitration & Conciliation (Amendment) Act, 2019 (No. 33 of 2019) including upto date amendments.

26. An arbitrator should be fair and absolutely impartial. He should have no bias and should decide the dispute referred to him in a judicious manner and not in capricious or whimsical manner. The terms of reference under the arbitration agreement should be strictly followed.

27. The Arbitrator/Arbitral Tribunal shall act and decide the case in accordance with the provision of the Arbitration & Conciliation Act, 1996, the Arbitration & Conciliation (Amendment) Act, 2015 (No. 3 of 2016) and the Arbitration & Conciliation (Amendment) Act, 2019 (No. 33 of 2019) including further amendments issued by the Government of India as issued upto date of reference to arbitration.
APPLICATION FORM FOR EMierrezMENT OF ARBITRATOR
IN MINISTRY OF DEFENCE PANEL OF ARBITRATORS

1. Name (in BLOCK letters):

2. Address:

3. Date of Birth:

4. Contact No, Fax & E-mail:

5. Professional Qualifications

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Institution/University</th>
<th>Year of Passing</th>
<th>Remarks</th>
</tr>
</thead>
</table>

6. Professional Experience
   (Last 15 yrs)

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Position Held</th>
<th>Nature of Duties</th>
<th>Remarks</th>
</tr>
</thead>
</table>

7. (a) Date of Superannuation

(b) Pay Scale/Grade at the time of Retirement/Superannuation (attach copy of retirement order).

8. Membership of Other Institutions, if any, with Grade/Type of membership

<table>
<thead>
<tr>
<th>Name of Institution</th>
<th>Grade of membership</th>
<th>Year</th>
<th>Remarks/Validity</th>
</tr>
</thead>
</table>

9. Arbitration/DRB/DAB Experience (Domestic)*

<table>
<thead>
<tr>
<th>TYPE</th>
<th>Number</th>
</tr>
</thead>
</table>
10. Arbitration/DRB/DAB Experience (International)*

<table>
<thead>
<tr>
<th>TYPE</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Cases as a Sole Arbitrator/DRB/DAB</td>
<td></td>
</tr>
<tr>
<td>Number of Cases as Tribunal Member</td>
<td></td>
</tr>
</tbody>
</table>

* Copies of first and last page of the Arbitration Award/DRB/DAB recommendation shall be attached.

11. Details of disputes handled

<table>
<thead>
<tr>
<th>Ser No</th>
<th>Project</th>
<th>Amount of Contract</th>
<th>Name of dispute</th>
<th>Amount of Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

(attach separate sheet if required)

12. Arbitration Training/Workshop/Seminar etc attended

<table>
<thead>
<tr>
<th>Name of the Programme</th>
<th>Period Year</th>
<th>Organizer's Name</th>
<th>Total Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

13. I hereby declare that:-

(a) I have retired on superannuation from the Department/service of ________ from the Office of ________ on ________.

(b) There was no vigilance/disciplinary case pending against me at the time of my retirement.

(c) After retirement no vigilance/criminal case has been contemplated against me.

(d) I hereby express to abide by the fee structure and other terms and condition of the guidelines for empanelment of Arbitrators in MES, Ministry of Defence and appointment of Arbitrators including amendments thereto as issued from time to time.

(e) I understand that my name will cease to exist on the panel of Arbitrators either on completion of term of three years or on attaining 72 years of age.
whichever occurs earlier and I shall ensure that all arbitration cases referred to me will be concluded within three months of my attaining the age of 72 years.

(f) I declare that the information given above is true to the best of my knowledge and belief.

Date: 
Place: 

Name and Signature of Applicant
Appendix ‘B’
(Refers to Para 19 and 20 of Guidelines
issued vide letter No.13600/Arb/Gen/E8
Dated 25.11.2020)

**FEE STRUCTURE**

<table>
<thead>
<tr>
<th>Sum in Dispute</th>
<th>Model Fee structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto Rs 5,00,000/-</td>
<td>Rs 45,000/-</td>
</tr>
<tr>
<td>Above Rs 5,00,000/- and upto Rs 20,00,000/-</td>
<td>Rs 45,000/- plus 2 percent of the claim amount over and above Rs 5,00,000/-</td>
</tr>
<tr>
<td>Above Rs 20,00,000/- and upto Rs 1,00,00,000/-</td>
<td>Rs 75,000 plus 1.5 percent of the claim amount over and above Rs 20,00,000/-</td>
</tr>
<tr>
<td>Above Rs 1,00,00,000/-</td>
<td>Rs 1,95,000/- plus 0.50 percent of the claim amount over and above Rs 1,00,00,000/- subject to maximum ceiling of Rs 5,00,000/-</td>
</tr>
</tbody>
</table>

**Note:** In the event, the arbitral tribunal is consisting of a sole arbitrator, he shall be entitled to an additional amount of Twenty Five percent on the fee payable as per the table set out above. Maximum ceiling shall also be enhanced accordingly.
Expenses other than fees for the Arbitration Tribunal which shall be paid are as follows:-

<table>
<thead>
<tr>
<th>S. No</th>
<th>Particulars</th>
<th>Amount Payable per Arbitrator (per case)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Secretarial assistance and incidental charges, telephone, fax, postage etc.</td>
<td>Rs 10,000/-</td>
</tr>
<tr>
<td></td>
<td>including charges for publishing/ declaration of award/ settlement agreement</td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>Other expenses (actuals against bills subject to the prescribed ceiling)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Travelling Expenses for outstationed Arbitrators</td>
<td>Economy class Air Ticket</td>
</tr>
<tr>
<td></td>
<td>Lodging and Boarding for outstationed Arbitrators</td>
<td>As admissible to an officer not below SAG level/ Brig</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Or as per last entitlement, whichever is less.</td>
</tr>
<tr>
<td>(d)</td>
<td>Local Travel (Taxi/Train)</td>
<td>As admissible to an officer not below SAG level/ Brig</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Or as per last entitlement, whichever is less.</td>
</tr>
<tr>
<td>(e)</td>
<td>Providing facilities of hearing rooms</td>
<td>To be arranged by Claimant &amp;Respondent for alternate hearings / on equal sharing basis.</td>
</tr>
</tbody>
</table>