

F. No. 11/12/2021-Th.II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 7th January, 2022

To

1. The Chief Secretaries of All the State Government / UTs (As per list)
2. The Chairperson, Central Electricity Authority
3. The Chairman, Central Water Commission
4. CMDs of all the CPSUs under Ministry of Power

Subject: Invitation of Expression of Interest (Eoi) for empanelment of Independent Experts for constitution of Conciliation Committees for dispute resolution of contractual disputes in respect of the projects implemented by CPSEs / Statutory bodies under administrative control of Ministry of Power – regarding.

Sir,

With the approval of Hon'ble Union Minister for Power and New & Renewable Energy, a dispute resolution mechanism through conciliation by Conciliation Committee of Independent Experts (hereinafter CCIEs) for contractual disputes in respect of the projects implemented by CPSUs / Statutory bodies under administrative control of Ministry of Power, Govt. of India, has been formulated. A copy of the guidelines are enclosed at Annex-I, which is self-explanatory.

2. In this regard, Expression of Interest is hereby invited from eligible candidates for empanelment of Independent Experts for constitution of the CCIEs in accordance with the terms and conditions mentioned in this Ministry's Notification dated 07.01.2022 enclosed at Annex-II. It is requested that the enclosed Notification may kindly be given wide publicity in order to ensure maximum participation of the eligible participants.

Encls: as above.

Yours faithfully,



(Vikrant S. Dhillon)

Deputy Director

Email: hydro2-mop@gov.in

Tel.: 23705841

Copy to:

1. Department of Financial Services, Ministry of Finance, Govt. of India with request to give wide publicity to the enclosed Notification amongst the Commercial Banks / Financial Institutions / NBFCs under them.
2. Ministry of New & Renewable Energy with request to circulate the Notification amongst the CPSUs under its administrative control.

Copy also to:

In-Charge, NIC Cell, MoP with request to upload the Notification on home-page / front-page of the website of Ministry of Power urgently and to ensure that it remains on the home-page for at least 30 days.

F. No. 11/22/2021-Th.II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg,
New Delhi, Dated 29th December, 2021

OFFICE MEMORANDUM

Subject: Dispute Resolution through Conciliation for Contractual Disputes in Projects implemented by CPSUs / Statutory Bodies under the administrative control of Ministry of Power – Constitution of Conciliation Committee of Independent Experts (CCIE) – Reg.

CPSUs / Statutory Bodies (Developer) executing power projects, have been raising concerns that the present modalities of dispute resolution are not adequate to expeditiously and effectively address the disputes between the Developer and the Contractors. The delay in resolution of such contractual disputes has been identified as one of the major reasons impacting timely completion of power sector projects. The existing mechanism of dispute resolution through Dispute Resolution Boards or Arbitration Tribunal often takes considerable time, which leads to sub-optimal cash flow for the contractors and in time and cost overrun of the projects.

In this context, a Committee of Board Level Officers of CPSUs was constituted to study the field level issues and the difficulties in resolving the issues. The Committee submitted its report, which was deliberated upon in this Ministry in consultation with Central Electricity Authority and the CPSUs. It was observed that several disputes have been arising under the contracts which are not only involving exorbitant legal costs, but also causing diversion of precious human resources of both parties involved in disputes. Early amicable resolution of these disputes is in the interest of all the stakeholders.

2. After careful consideration, Government of India in the Ministry Power have decided to constitute Conciliation Committees of Independent Experts (CCIE), for settlement of disputes arising in contracts of CPSUs / Statutory Bodies executing power projects. There shall be three CCIEs. Each CCIE shall have three members having high level of integrity and proven track record. The Members shall be appointed from amongst the following categories:-

- I. Former Officers of the rank of Secretary / Additional Secretary to the Govt. of India.
- II. Sector Experts having substantial domain knowledge of project development and O&M of power projects.
- III. Experts in Finance with experience in senior positions of Financial Institutions.

Provided that one of the members in each CCIE should be from the category mentioned at 2(II) above i.e. Sector Expert having substantial domain knowledge of project development and O&M of power projects.



3. Broad Terms and Conditions:

3.1 The panel of the Independent Experts shall remain valid for a period of three years from the date of its formation and the validity of panel can be extended but not beyond total tenure of 5 years. Depending on the response from the contesting parties and the work-load, the number of panels may be suitably increased from time to time.

3.2 Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee per sitting. In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding. The conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months. In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings. The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Developer or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work. All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Developer CPSE/Statutory Body initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.

3.3. There shall not be any conflict of interest for the members of the CCIE due to their past assignments. Individuals appointed as CCIE members shall submit an undertaking in this regard. It shall be ensured that they have not been engaged for providing any services to any of the parties i.e. either Developer organisation or the Contractor in the last five years.

3.4. The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point before the committee with regard to their respective stance and view the exercise in the spirit of conciliation / settlement.

4. Standard Operating Procedure:

4.1 On receipt of a reference from the Contractor for conciliation of dispute, the concerned Head of Project (Developer) shall send a communication within 7 working days thereby inviting the Contractor to depute a team of their representatives to interact with the Contract Department (Developer). The template of the communication is enclosed at Annex, which may be modified as per requirement.

4.2 The Contract Department (Developer) will obtain the details and examine the correspondence of either parties relating to disputes, normally within 30 days. They may hold discussions with the team of Contractor and Head of Project to crystallise the issues; prepare the agenda containing the gist on each dispute and set up suitable meetings in an effort to

resolve the issue internally. The present internal mechanism in the CPSU / Statutory Body may be fully exercised to resolve the issue even before attempting conciliation by CCIE.

4.3 Once a conciliation request has been raised by the contractor, within 30 days the same shall be referred to the CCIE in the event of the matter remaining unresolved internally. The CMD/Board of the Developer may suitably decide an amount involved in the dispute below which it would not go into the exercise of conciliation after weighing the nature and quantum of disputes in the concerned organization.

4.4 The Developer will also be free to suggest the option of resolution of disputes by conciliation in case a dispute has arisen. The contractor may select any one of the three CCIEs after leaving out those CCIEs which are unavailable due to work load or any other reason. A CCIE will normally be considered unavailable if it is handling cases to such an extent that there would be avoidable delay in the event of more cases being taken up by the same CCIE.

4.5 The work of maintaining details of CCIE, its members, work load and allocation of a dispute to CCIE will be entrusted to CEA.

5. The possibility of non-availability of any one of the members of CCIE in any proceedings cannot be ruled out. As such, the Committee comprising the other two members shall be competent to proceed in the matter. The proceedings of the Committee shall not be vitiated if one of the three members of CCIE is not present in the deliberations of the Committee. When the parties sign the settlement agreement, at least two conciliators shall authenticate the same. Such conciliation proceedings shall be considered valid and the settlement agreement will be binding on the parties.

6. In case of any disagreement during execution of contracts, it is expected that the parties will take up the matter first with the Dispute Avoidance Mechanism (through Independent Engineer), wherever the option is available. In case of its failure, the parties may refer the matter further to the Conciliation Committee. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle and dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of Courts. However, the option of Arbitration would not be available once the conciliation mechanism has been exercised. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996

7. After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.

8. Once the conciliation process succeeds in reaching a settlement agreement, at the level of the Conciliation Committee, further legal proceedings by the CPSU/ Statutory Body/

Autonomous Body under MoP, will be allowed only after obtaining the approval of Ministry of Power.

9. Procedure in cases already pending before the Arbitral Tribunals / Courts:

In cases of disputes pending before the Arbitration Tribunals or the Courts, both of the parties [i.e. Developer and Contractor] need to agree to explore the possibilities of conciliation through the Conciliation Committee of Independent Experts. In case of such agreement, an appropriate reference shall be made to the Conciliation Committee, upon which the Committee shall proceed to examine such reference(s). The option of resolution through conciliation through CCIE would be open only in the event of the parties withdrawing from arbitration proceedings and undertaking to forego their rights to proceed for further arbitration in the subject matter. However, other legal remedies would be open to the parties in the event of the conciliation proceedings not being successful.

10. The Conciliation Mechanism shall be available in all the existing and future contracts. Suitable provisions of Conciliation Mechanism shall be incorporated in the contract documents entered into in the future by all CPSUs/Statutory Bodies of Ministry of Power.

11. CCIE is an alternate dispute resolution mechanism being put in the place by the Ministry. If the Contractor is not willing to take recourse to this process or has any reluctance in this behalf, there shall be no compulsion to take such a recourse.

This issues with the approval of Hon'ble Minister of Power and New & Renewable Energy.

(R. P. Pradhan)
Director (Hydel-II)

1. Chairperson, CEA
2. Chairperson, CWC
3. CMDs / Chairman(s) of all the CPSUs / Statutory Bodies / Autonomous Bodies under the Ministry of Power

Copy to:

1. PS to Hon'ble Minister of Power & NRE
2. PS to HMoS for Power
3. Sr. PPS to Secretary (Power)
4. Sr. PPS to AS (SKG) / Sr. PPS to AS (VKD) / Sr. PPS to AS&FA
5. PPS to All Joint Secretaries in Ministry of Power
6. PPS to EA
7. All Directors / Deputy Secretaries / Under Secretaries / Deputy Directors, MoP

Template Letter to be sent to the Concessionaire/ Contractor/ Consulting party

From:

HOP – concerned Developer

Address

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.....

To

No. _____ Date: _____

**Subject: Your reference dated _____ regarding the Dispute in the project
_____ for a meeting at the level of CMD (Developer)
and Chairman (Contractor Agency) for settlement.**

Sir,

Kindly refer to your above cited reference on the subject cited above. It is agreed to refer the matter for consideration of the CMD, Developer and Chairmen of BOD of the Contractor for settlement of the dispute. However, in order to arrive at any proposed conciliation, it would be useful if the team from the Developer and your Company / firm discuss and crystallise the issues in advance of the proposed meeting.

2. You are, therefore, requested to discuss the issues / disputes with the Developer team led by the Contract Management Division of the Developer on a date mutually convenient.

Yours Sincerely,

(_____)

HOD / General Manager
Concerned Developer

Copy to:

1. CMD, Developer
2. AGM(Project), Developer. It is requested that all correspondence / documents relating to the subject along with index may please be furnished to the Contract Management Division within 7 days of this letter.

**Government of India
Ministry of Power**

Notification No. 11/22/2021-Th.II

Date: 7th January 2022

**INVITATION FOR EXPRESSION OF INTEREST (EoI) FOR EMPANELMENT
OF MEMBERS OF CONCILIATION COMMITTEE OF INDEPENDENT
EXPERTS(CCIE) FOR RESOLUTION OF DISPUTES IN CONTRACTS OF
CPSUs/STATUTORY BODIES OF MINISTRY OF POWER**

1.0 Background

CPSUs/Statutory Bodies (Developer) executing power projects, have been raising concerns that the present modalities of dispute resolution are not adequate to expeditiously and effectively address the disputes between the developer and the contractors. The delay in resolution of such contractual disputes has been identified as one of the major reasons impacting timely completion of power sector projects. The existing mechanism of dispute resolution through Dispute Resolution Boards or Arbitration Tribunal often takes considerable time, which leads to sub-optimal cash flow for the contractors and in time and cost overrun of the projects.

After careful consideration, Government of India in the Ministry of Power has decided to constitute 3 Committees of Independent Experts (hereinafter CCIE) for settlement of disputes arising in contracts of CPSUs / Statutory Bodies executing power projects. Each of the three CCIEs, shall have three members having high level of integrity and proven track record. The Members shall be appointed from amongst the following categories:-

- I. Former Officers of the rank of Secretary / Additional Secretary to the Govt. of India.
- II. Sector Experts having substantial domain knowledge of project development and O&M of power projects.
- III. Experts in Finance with experience in senior positions of Financial Institutions.

Provided that one of the Members in each CCIE should be from the category mentioned at (II) above i.e. sector expert having substantial domain knowledge of project development and O&M of power projects.

The main objectives of CCIE are as follows:

- To provide faster and cost effective mechanism for resolution of contractual disputes.
- For expeditious elimination of disagreements in a just and fair manner.
- To avoid time and cost overruns to ensure timely completion of the Projects.

With the above objectives in view, Ministry of Power, Govt. of India, intends to select and empanel members of CCIE with high level of integrity and proven track record, by adopting a transparent and objective selection process as per the requirements set out in this EoI.

2.0 Expression of Interest

Expression of Interest (EoI) is invited from domestic individual for empanelment as members of CCIE for settlement of disputes arising in contracts of CPSUs / Statutory Bodies executing power projects.

3.0 Eligibility and Experience Requirements

A retired person with the following qualifications and experience shall be eligible to apply to be empanelled as member of CCIE:

Category – I:

Has held the post of the rank of Secretary / Additional Secretary to the Government of India in any of the Ministries/Departments.

Category-II:

Has held the post of full time functional Director (dealing with technical matters) / CMD in the Board of a CPSU operating in the field of power generation, distribution or transmission.

Or

Has held the post of full time functional Director (dealing with technical matters) in the Board of a State PSU/Private Sector Company (with annual turnover of Rs 2000 crore or above) operating in the field of power generation, distribution or transmission.

Or

Has held the post of Chairperson/Member in Central Electricity Authority/Central Water Commission.

Category-III:

Has held the post of full time functional Director/CMD in the Board of a Scheduled Commercial Bank/Financial Institutions/NBFCs (including REC/PFC/IREDA)

4.0 Broad Scope of Work

The broad scope of work of the CCIE shall include the following:

- Once a conciliation request has been raised by the contractor, within 30 days the same shall be referred to the CCIE in the event of the matter remaining unresolved internally. The CMD/Board of the Developer may suitably decide

an amount involved in the dispute below which it would not go into the exercise of conciliation after weighing the nature and quantum of disputes in the concerned organization.

- The Developer will also be free to suggest the option of resolution of disputes by conciliation in case a dispute has arisen. The case will be referred to the CCIE as per the preference of the Contractor after leaving out those CCIEs which are unavailable due to work load or any other reason like conflict of interest. A CCIE will normally be considered unavailable if it is handling cases to such an extent that there would be avoidable delay in the event of more cases being taken up by the same CCIE.
- Members of CCIE, shall declare any conflict of interest in advance. They should not have been engaged for providing any other services to any of the parties i.e. either Owner or Contractor in the last five years (s).
- The conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE.
- In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months. In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only.
- The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Developer or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.
- The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point before the committee with regard to their respective stance and view the exercise in the spirit of conciliation / settlement.
- The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle and dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of Courts. However, the option of Arbitration would not be available once the conciliation mechanism is sought to be exercised. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996
- The possibility of non-availability of any one of the members of CCIE in any proceedings cannot be ruled out. As such, the Committee comprising the other two members shall be competent to proceed in the matter. The proceedings of the Committee shall not be vitiated if one of the three members

of CCIE is not present in the deliberations of the Committee. When the parties sign the settlement agreement, at least two conciliators shall authenticate the same. Such conciliation proceedings shall be considered valid and the settlement agreement will be binding on the parties.

- After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.

5.0 Process of selection of a Member of CCIE:

By evaluating the EoI submitted by the applicants, Ministry of Power, Govt. of India, would assess their capabilities for empanelment as Member of CCIE, for the proposed scope of work. Ministry of Power may use available independent data for evaluation of the applicant(s) and information that has been submitted against this document. Ministry may also call for original of the supporting documents for verification, if so deemed fit and also cross check any detail as furnished by the applicant from any other source.

The members selected through this process shall be empaneled by Ministry of Power. 3 panels of CCIE shall be prepared from the empanelled list and would be published by the Ministry of Power on its website. Each CCIE would comprise three Members.

In case of adverse findings about any of the members of CCIE such as not performing duties or lack of integrity, that member would be dropped by the Ministry from the CCIE and he/she will be replaced by a new member of the same category from the panel.

Ministry reserves the right to reject any applicant, if:

- At any point of time, it is found that the applicant has a Conflict of Interest. Applicant should not have been engaged for providing any other services to any of the parties i.e. either Owner or Contractor in the last five years (s).
- At any point of time, it is found that the applicant(s) has misrepresented the facts or information; or
- The applicant does not reply promptly and thoroughly to the request for supplementary information, as may be required for evaluation.

6.0 Tenure of Engagement

The panel of Independent Experts would remain valid for a period of three (3) years from date of its formation and validity of panel can be extended but not beyond total tenure of five years.

7.0 Terms and Conditions for Payment to members of EI

Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee (per sitting). In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding. The conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months. In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings. The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Developer or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.

8.0 Submission of Expression of Interest (EOI)

Interested applicants are requested to submit their application complete in all respects, with details as outlined below. The application submitted by the Applicant shall include;

- EOI Letter from the Applicant;
- Detailed Curriculum Vitae (CV) showcasing the required eligibility and experience requirements as per this EOI request;
- Documents justifying the relevant experience of the Applicant including certificates/letters of position held, roles delivered and other statements of tenure;
- List of relevant experience of applicant and any specific cases successfully handled pertaining to dispute avoidance or dispute settlement in various projects;
- Confirmation regarding Conflict of Interest provision as outlined in para 5 of this EOI request;
- Confirmation on Scope of Work, Payment Terms and other terms and conditions specified in EOI;
- Confirmation on adherence to Standard Operating Procedure (SOP) provided in Point No.-4 of this EOI request.

All documents as required above shall be furnished by the applicant **through** email at email id i.e. hydro2-mop@gov.in. Each page of the document submitted, shall be duly authenticated by the applicant.

The application (in response to this EOI) and all correspondence incidental to the application shall be written in ENGLISH language only. Any printed literature and document submitted in any other language shall be accompanied by authenticated English translation, in which case, for the purpose of interpretation of the

application, English translation shall govern. Responsibility for correctness in translation shall lie with the applicant.

9.0 Submission Details

The interested applicant should submit the information/documents through email on above mentioned email id mentioning the subject as “*EXPRESSION OF INTEREST (EOI) for EMPANELMENT AS MEMBER OF CONCILIATION COMMITTEE OF INDEPENDENT EXPERTS(CCIE)*”.

The Expression of Interest from interested candidates should reach this Ministry, on the aforesaid email i.e. hydro2-mop@gov.in, within 21 days from the date of issuance of this notification on the website of Ministry of Power. EoI(s) received after the stipulated time-frame shall not be entertained.

10.0. No Contractual Obligation

Ministry shall not be bound contractually or in any other way to any applicant to this EoI. Ministry is not liable for any costs or compensation in relation to the consideration of this EoI.

All Expression of Interest documents, upon submission by any applicant to this EoI shall become the property of Ministry.

11.0 Disclaimer

Issue of this document does not in any way commit or otherwise obliges Ministry to proceed with all or any part of a tender process. The EOI Request is not the subject of any process contract or any contractual obligations between Ministry and the applicants to the EOI.

Further, Ministry may, at its absolute discretion either modify or abandon any part or whole of the document and / or process, without giving prior notice to any or all the applicant.
