

No.RW/NH-34041/3/94 - DO III

Dated, the 28th September, 1994

**OFFICE MEMORANDUM**

**Subject:** Procedure and terms of appointment of Arbitrators for National Highway normal works and delegation of powers for the purpose within Ministry of Surface Transport

Nomination of Arbitrators shall be made from amongst the Panel of Arbitrators maintained by the Ministry as per the following delegation of powers :

<b>Amount in Dispute</b>	<b>Authority in MOST to nominate Arbitrator(s)</b>
(i) Above Rs. 5 lakhs and upto Rs. 10 lakhs	Concerned Project Chief Engineer
(ii) Above Rs. 10 lakhs and upto Rs. 25 lakhs	Concerned Addl. Director General
(iii) Above Rs. 25 lakhs	Director General (Road Development)

2. The arbitrator(s) shall be informed of the nature of dispute and the procedure laid down in the contract. Before accepting his/their nomination, the prospective arbitrator(s) shall be asked to disclose any circumstances such as financial or personal interest in the outcome of the award which may disqualify him/them as impartial arbitrator(s). No person, who has dealt with the case earlier in his official capacity, shall be appointed as an arbitrator in the case.

3. The arbitrator(s) shall be entitled to the remuneration for his/their services as given in the Annexure (attached).

4. A copy of the standard clause finalised by the Ministry for incorporation in the bidding conditions for the NH works already sent to the States and Union Territories, is enclosed for information of all concerned.

To

All Technical Officers in Roads Wing, Regional Officers of Ministry of Surface Transport,  
US(NH-I)/US(NH-II)

**Enclosure to Circular No.RW/NH-34041/3/94-DO III dated 28th September, 1994**

**Fee Structure and other Remuneration for Arbitrators for the Externally Aided and wholly Domestic Funded projects**

1. The basic fee payable to the Arbitrator will be linked to the amount in dispute as given below

<b>Amount in Dispute</b>		<b>Fee Payable (Rs)</b>
Upto Rs. 5 lakh	...	Rs. 2000/-
From Rs. 5 lakh one to 25 lakh	...	Rs. 2000/- plus Rs. 200/- per lakh of the amount exceeding Rs. 5 lakh.
From Rs. 25 lakh one to 1 crore	...	Rs. 6000/- plus Rs. 100/- per lakh of the amount exceeding Rs. 25 lakh.
From Rs. 1 crore one to 5 crore	...	Rs. 13,500/- plus Rs. 4000/- per crore of the amount exceeding Rs. 1 crore
From Rs. 5 crore one to 10 crore	..	Rs. 29,500/- plus Rs. 1000/- per crore of the amount exceeding Rs. 5 crore
Over Rs. 10 crore	...	Rs. 42,000/- plus Rs. 1000/- per crore of the amount exceeding Rs. 10 crore

2. If a case is concluded in upto 10 effective hearings, the Arbitrator's Fee will be fixed as per 1 above. In any arbitration matter where the proceedings continue for more than ten effective hearings, the Arbitrator may be entitled to an additional amount of 5% of the relevant Fee payable under 1 above for each hearing. However, the total Arbitrator's Fee should not exceed the double of the prescribed amount as per 1 above.

3. **In addition to the above**

- (i) Each Arbitrator will be entitled to receive a Special Fee for study of the pleadings, case material, writing of the award etc. with regard to the amount in dispute in each case as under :

Upto Rs. 5 lakh (Rs. 5,00,000)	...	Rs. 1000/- lumpsum
From Rs. 5 lakh one to Rs. 5 crore (Rs. 5,00,001 to Rs.5,00,00,000)	...	Rs. 2000/- lumpsum
Rs. 5 crore one and above (Rs. 5,00,00,001 and above)	...	Rs. 5000/- lumpsum

4. The Arbitrator's Fee will be paid after the Award is made. However, in appropriate cases, part fee upto 50% of the estimated total fee payable as above may be paid with the consent of the Parties after 10 hearings have taken place, in any matter.

5. **Other Expenses**

The arbitrator may be paid an amount of Rs. 200/- towards local conveyance for attending each arbitration hearing in the city of his residence. In respect of joint trial, the hearing will be treated as one irrespective of the number of cases. Any travelling and other expenses incurred by the arbitrator for attending the arbitration hearings in a city other than the place of residence, shall also be reimbursed to him as provided hereinafter. All the above expenses shall form part of the arbitration costs.

6. An arbitrator who has to travel shall be paid travelling expenses by air or rail (air conditioned wherever available) or car (when neither air nor rail transport is available) at actuals. In addition, he may be paid out-of-pocket

expenses at actuals for boarding, lodging and local transport subject to a maximum of Rs. 3000/- (Rs. 2000/- for stay, Rs. 500/- for food and Rs. 500/- for local transport) per day in metropolitan towns, Rs. 2000/- (Rs. 1200/- for stay, Rs. 400/- for food and Rs. 400/- for local transport) in class A cities and Rs. 1000/- (Rs. 500/- for stay, Rs. 250/- for food and Rs. 250/- for local transport) in other cities. An arbitrator who makes his own arrangements for boarding, lodging, local transport, etc., may be paid out of pocket expenses at the rate of Rs. 500/- per day, without production of vouchers.

7. The cost to be incurred on payment of T.A./D.A. to the arbitrator/s nominated by a party will be borne and paid by the Party nominating the arbitrator. However, if an appointed arbitrator changes his residence after his nomination by a Party, he will not be entitled to reimbursement of T.A./D.A. etc., for attending the arbitration hearing, unless the party nominating him agrees to reimburse to him.

8. The amount of the claim shall be stated in the application by the Party applying for arbitration. If the amount is stated in a currency other than the Rupee, it shall be converted into Rupees, at the current official rate of exchange.

#### **Annexure to Circular No. RW/NH-34041/3/94-DO III dated 28.9. 1994**

### **CONTRACT CLAUSE FOR INCLUSION IN BIDDING CONDITIONS FOR WHOLLY DOMESTIC FUNDED NH WORKS**

#### **Settlement of Disputes**

1. If any dispute or difference of any kind whatsoever (the decision whereof is not herein otherwise provided for) shall arise between the Employer and the Contractor in connection with the, or arising out of the contract, or the execution of the works, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the contract, it shall, in the first place, within six months of occurrence of the said event(s), be referred to and be settled by the Engineer who shall, within a period of sixty days after being requested in writing by the Contractor or Employer to do so give written notice of his decision to the Contractor/Employer. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Contractor, who shall proceed with the execution of the work with all due diligence whether he or the Employer requires arbitration, as hereinafter provided, or not. If the Engineer has given written notice of his decision to the party(ies) and no claim to arbitration has been communicated to him by the concerned party within a period of 90 days from receipt of such notice, the said decision shall remain final and binding upon the party concerned. If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of 60 days after being requested as aforesaid, or if either the Employer or the Contractor be dissatisfied with any such decision, then and in any such case either the Employer or the Contractor may within 180 days after the expiration of the first-named period of 60 days on receiving notice of such decision, as the case may be, require that the matter or matters in dispute be referred to arbitration as hereinafter provided.

#### **2. Arbitration**

All disputes or differences in respect of which the decision, if any, of the Engineer has not become binding as aforesaid and amicable settlement has not been reached, shall, on the initiative of either party, be referred to the adjudication. The sole Arbitrator for claims upto Rs.5.00 lakhs shall be appointed by the State Chief Engineer. Such appointed Arbitrator shall be a person not below the rank of Executive Engineer and not connected with the Contract. The claims above Rs.5.00 lakhs and upto Rs.25.00 lakhs shall be settled by a sole arbitrator to be nominated by the Director General (Road Development), Ministry of Surface Transport, Government of India, New Delhi. A copy of the order shall be supplied to both the parties. The claims of more than Rs.25.00 lakhs shall be referred to the adjudication of a Committee of three arbitrators. The Committee shall be composed of one arbitrator to be nominated by the employer, one to be nominated by the Contractor and the third, who will also act as the Chairman of the Committee, to be nominated by the Director General (Road Development), Ministry of Surface Transport (Roads Wing), Government of India, New Delhi. If either of the parties abstain or fail to appoint his arbitrator, within 60 days after receipt of notice for the appointment of such arbitrator, then the Director General (Road Development), Ministry of Surface Transport (Roads Wing), Government of India shall also appoint such arbitrator(s). A certified copy of the appointment made by the Director General (Road Development), Ministry of Surface Transport (Roads Wing), Government of India shall be furnished to

both parties. The decision about the appointment of the arbitrators by the Ministry of Surface Transport shall be final and binding on both the parties. Any person appointed as Arbitrator shall not be connected with the work.

3. Save as otherwise provided in the Contract, the Arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modifications or enactment thereof and shall be held at such place and time in India as the arbitrator or the Committee of Arbitrators may determine. The decision of the Arbitrator(s) shall be final and binding as may be determined by the Arbitrator(s).

4. Performance under the contract shall continue during the arbitration proceedings and payments due to the Contractor by the Employer shall not be withheld, unless they are the subject matter of the arbitration proceedings.

5. All awards shall be in writing and such awards shall state reasons for the amounts awarded. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrators as aforesaid and neither party will be limited in the proceedings before such arbitrators to the evidence of arguments put before the Engineer for the purpose of obtaining his said decisions.