

MRVC POLICY ON MEDIATION AND ARBITRATION

Guidelines have been received from the Ministry of Finance vide letter No. F.1/2/2024-PPD dated 03.06.2024 for Arbitration and Mediation in Contracts of Domestic Public Procurement.

In this regard a meeting was held on 22-10-2024 to deliberate on the above recommendations, which was attended by CMD, all the Directors and concerned HODs.

Following guidelines are proposed to be adopted in MRVC:

- A. For Bank funded tenders, the Arbitration and Reconciliation clauses shall be governed by the policy guidelines of the funding agency.
- B. For non-bank funded (i.e. counterpart funded) tenders the procedures shall be as per the following:
 1. The Arbitration clause shall be included in the tender document as per the value mentioned below:

Sr.	Tender Value (NIT value inclusive of GST)	Arbitration clause
1	For works having value Less than INR 50 lakh	Not to be included
2	For works having value more than INR 50 lakh	To be included


2. As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than INR 10 Crores. This figure is with reference to the value of the dispute (not the value of the contract, which may be much higher). It shall be specifically mentioned in the bid conditions/ conditions of contract that in all other cases, arbitration will not be a method of dispute resolution in the contract.

Accordingly, a clause shall be added in the SBD as:


"Whenever the value of dispute/claims (including counterclaims) arisen is less than INR 10 Crores then Arbitration is admissible as per the Arbitration and Reconciliation Act. Simultaneously, whenever the value of dispute/claims (including counterclaims) arisen is more than INR 10 Crores, then Arbitration is not admissible. ible."

The appointment of Arbitrators shall be as under (Reference: Hon'ble SC ruling dated 08.11.2024 a 5-judge bench of SC in CORE Vs ECI SPIC SMO MCML (JV) on unilateral appointment of Arbitrators).

- (a) The Contractor shall be given an option to opt an arbitrator either from the existing panel of arbitrators from MRVC or potential arbitrator of his choice from outside.
- (b) MRVC shall opt an arbitrator from existing panel of arbitrators of MRVC.
- (c) Both the arbitrators as opted by Contractor & MRVC in paras (a) and (b) above shall mutually select the principal arbitrator from the existing panel of arbitrators from MRVC or potential arbitrator of his choice from outside.


14.01.2025
Manoj Kumar Sinha
FA&CAO


Dinesh Vashishtha
CSTE


Guru Prakash
GM (Procurement)


3. Inclusion of arbitration clauses covering disputes with a value exceeding INR10 Crores, should be based on careful application of mind and recording of reasons and with the approval of CMD.
4. MRVC should avoid and/ or amicably settle as many disputes as possible using mechanisms available in the contract. Decisions should be taken in a pragmatic manner in overall long-term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party.
5. To settle the disputes amicably, the process of Mediation should be encouraged to be adopted with mutual consent. The mediation process shall be as per the Mediation Act 2023. This clause shall be added to SBD. Even if mediation is not included in the contracts, then both parties may take decision to opt for mediation as per the Mediation Act.

Accordingly, a clause shall be added in the SBD as:

"To settle the disputes amicably, both MRVC and Contractor are at liberty to adopt mediation process as per the Mediation Act 2023. Even if mediation is not included in the contracts, then both parties may take decision to opt for mediation as per the Mediation Act."

6. Institutional Mediation/Arbitration will not be adopted.
7. MRVC shall have its own panel of Mediators/ Arbitrators.
8. Formation of Mediation Committee:
 - (b) In cases where claim's value is less than INR 10 Crores, then the claim shall be termed as Low Value Claim. In such cases, the mediation shall be optional. The process of mediation shall be undertaken with the consent of both Contractor and MRVC.
 - (c) In cases where claim's value is equal to or more than INR 10 Crores, then the claim shall be termed as High Value Claim. In such cases, the mediation shall be mandatory.
 - (d) The Mediation Committee shall consist of two members; One member as representative of MRVC and the other member as representative of the Contractor. MRVC shall opt a mediator from existing panel of arbitrators of MRVC. However, the Contractor shall be given an option to opt a mediator either from the existing panel of arbitrators from MRVC or potential mediator of his choice from outside.
9. Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of Sixty days from the date of intimation of appointment to the mediator(s).

The period for mediation mentioned may be extended for a further period as agreed by the parties, but not exceeding sixty days.


14.01.2025
Manoj Kumar Sinha
FA&CAO


Dinesh Vashishtha
CSTE


Guru Prakash
GM (Procurement)

10. A mediated settlement agreement includes an agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator: Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.


Explanation: A mediated settlement agreement which is void under the Indian Contract Act 1872 shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.

Where a mediated settlement agreement is reached between the parties with regard to all or some of the disputes, the same shall be reduced in to writing and signed by the parties.


11. Subject to the provisions of section 26 of Mediation Act, where no agreement is arrived at between the parties, within the time period as provided under Section 18, or where, the mediator is of the view that no settlement is possible, he shall prepare a non-settlement report and provide a signed copy to all the parties, provided that the report referred to in this section shall not disclose the cause of non-settlement, or any other matter or thing referring to their conduct, during mediation.
12. A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of Chapter VI of Mediation Act.
13. The claims settled through settlement agreement shall be sanctioned by concerned Director for final disposal/payment.
14. The fees for every member of mediator shall be same as prescribed for the adjudicator by MRVC.
15. The mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings.

The mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

16. In matters covered by arbitration/ court decisions, the guidance contained in General Instructions on Procurement and Project Management dated 29.10.2021, issued by DOE, should be kept in mind. In cases where there is a decision against the Government/ Public Sector Enterprise, the decision to challenge/ appeal should not be taken in a routine manner, but only when the case genuinely merits going for challenge/ appeal and there are high chances of winning in the court/ higher court.


14.01.2025
Manoj Kumar Sinha
FA&CAO


Dinesh Vashishtha
CSTE


Guru Prakash
GM (Procurement)