

Tele: 25686876

Email: bro-e8@nic.in

<http://www.bro.nic.in>

<http://www.gref.nic.in>

SDS/Reed SDS/E-Mail

Dte General Border Roads

Seema Sadak Bhawan

Ring Road, Delhi Cantt

New Delhi – 110010

24228/DGBR/Policy Instr/2019/ 01 /E8

08 Jan 2019

ADGBR (East)
C/o 99 APO

ADGBR (N-W)
C/o 99 APO

CE Project _____
C/O 56/99 APO
(All Project)

DEFENDING ARBITRATION CASES

1. During analysis of Arbitration Awards, It has been noticed that cases are not being properly defended during Arbitration, and even explicit contract conditions to counter contractor's claims are not brought to the knowledge of Arbitrator due to which Awards are being published in favour of contractor in contravention to contract conditions leading to further contesting of Arbitration Award in the court. A few of such contract conditions are given below:-

(a) Condition 48 of IAFW-2249 (GCC): Damage & loss: - "All plant, temporary building equipment, and things on the site provided by or on behalf of the contractor for the construction of, but not for incorporation in the works shall stand at the risk and be in the sole charge of the contractor and the contractor shall be responsible for and with all possible speed make good, any loss or damage thereto arising from any cause whatsoever, including the accepted risk".

Thus it is explicitly clear that, the Govt. is not liable for compensating loss or damage to the V/E/P occurred at site from any cause whatsoever, including the accepted risk.

(b) Special Condition 11(a) and 11(b): Reimbursement/Refund of variation in taxes:-

(i) **Condition 11(a)** - The rates quoted by the contractor shall be deemed to be inclusive of all taxes (including sales Tax/VAT on materials, Sales Tax/VAT on works contracts Turnover Tax, Service tax, labour welfare Cess/Tax etc), duties, Royalties, Octroi, and other levies payable under the respective statutes. No reimbursement/refund for variation in the rates of taxes, duties, royalties, Octroi & other levies, and/or imposition/abolition of any new/existing taxes, duties, royalties, octroi & other levies shall be made except as provided in sub para (b) here-in-below.

(ii) **Condition 11(b) (i)** – The taxes which are levied by Govt at certain percentage rates of contract sum/amount shall be termed as "taxes directly related to contract value" such as Sales Tax/VAT on works contracts, Turnover Tax, Labour Welfare Cess/Tax and like but excluding income Tax.

PTO

The tendered rates shall be deemed to be inclusive of all "taxes directly related to contract value" with existing percentage rates as prevailing on last due date for receipt of tenders. Any increase in percentage rates of "taxes directly related to contract value" with reference to prevailing rates on last due date for receipt of tenders shall be reimbursed to the contractor and any decrease in percentage rates of "taxes directly related to contract value" with reference to prevailing rates on last due date for receipt of tenders shall be refunded by the contractor to the Govt/deducted by the Govt from any payment due to the contractor. Similarly, imposition of any new increase in "taxes directly related to contract value" after last due date for receipt of tenders shall be reimbursed to the contractor and abolition of "taxes directly related to contract value" after the last due date for receipt of tenders shall be refunded by the contractor to the Govt/ deducted by the Govt from any payments due to the contractor.

Thus it can be seen that, the increase in VAT on bitumen comes within the purview of Condition 11(a) which debars the contractor for raising claim for refund for variation in the VAT for bitumen. The contractor is entitled for reimbursement of variation in any taxes directly related to contract value only. The taxes directly related to contract value has been defined as the taxes which are levied by the Govt at certain percentage rates of contract sum/amount.

2. In view of the above, please ensure that while preparing pleadings-in-defence on such claims above conditions should be invariably brought out to the knowledge of the Arbitrator and placed on record to safeguard Govt. interest.

3. Please ensure that this is disseminated up to OC level for effectively defending the Arbitration case.



(SK Deota, IDCMS)
Dir (Contract)
For Dir Gen Border Roads