

Government of India  
Directorate General of Works  
Central Public Works Department

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Mp : DGW/CON/34

New Delhi, the .6.1990

M E M O R A N D U M

Sub : Appointment of arbitrators - parties invoking arbitration to establish existence of disputes.

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Attention is invited to para 4/Section 36 of CPWD Manual Volume II, according to which CE is to appoint an arbitrator under Clause 25 of the agreement after obtaining report of the EE/SE on the claims of the contractor, invoking arbitration.

In this connection, Ministry of Law have advised that the party invoking arbitration clause should give information enough to justify existence of dispute. For this purpose the party has to give details about the demand having been made and its refusal by the other party. It is held by Courts of Law that a 'dispute' implies an assertion of right by one party and repudiation thereof by the other. Existence of a dispute is a condition precedent to arbitration. If there is no existence of disputes, there cannot be any right to demand arbitration.

In view of the above advice of Ministry of Law, the CEs are requested that before appointment of arbitrators, they should ensure that existence of dispute(s) has been established. For this purpose the party invoking arbitration clause should be asked to produce documentary evidence of their claims having been duly lodged with the other party and refusal by the other party to pay.

*P.C. Sud*  
( P.C. Sud )  
F.O. to D.G(Works)

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To

1. All CEs/SEs/EEs in CPWD (including Hort. Directorate, Delhi Admn. )
2. F.O. to DDG(EW), Deptt. of Telecom., 6th Floor, Sanchar Bv., New Delhi-1.