

Standard Operating Procedure [SOP] for release of payments to the Contractors in terms of CCEA decisions-NITI Aayog O.M. NO: No. 14070/14/2016- PPPAU Dtd. 5th September 2016 & Ministry of Power, Govt. of India, Letter No.28/3/2016-Coord(Pt-III), Dtd.29th.Sept'2016

Background:

1. Pursuant to the decisions taken by the Cabinet Committee on Economic Affairs (CCEA) for revival of the Construction Sector, the NITI Aayog had issued OM No. 14070/14/2016- PPPAU dated 5th September 2016 titled “**Measures to revive the Construction Sector – reg.**” containing the decisions for implementation by all the concerned Ministries / Departments / PSUs. As per the decision taken by the CCEA, cases where the Arbitration Tribunals have passed orders in favour of the Contractors/ Concessionaires in arbitral proceedings and such awards/ orders have been further challenged by the government agencies in courts of law, all the works executing agencies are required to pay an amount equal to 75% of the total pay-out (i.e. Arbitral Award amount including the interest payable as per such Award, if any) should be released to the Contractors/ Concessionaires against a Bank Guarantee without prejudice to the rights and stand of the Agency and subject to the final order of the court in the matter under challenge. The OM further stipulates that in case the matter under legal challenge is decided in favour of the works executing agency (the Departments/ PSUs are referred to as the ‘Agency’ throughout the SOP), it would be entitled to recover the said amount along with appropriate interest.
2. The process of implementation of the above decision of the CCEA needs to be laid down through a **Standard Operating Procedure (SOP)**. While each of the Ministries/ Departments/ PSUs is free to evolve its own SOP for smooth implementation of the decision taken by the CCEA, a suggested framework of the SOP is given hereinafter, which may be used by the Ministries/ Departments/ PSUs with or without any amendments therein. The following paragraphs detail out the **Standard Operating Procedure (SOP)** to be followed by **North Eastern Electric Power Corporation Ltd.** (hereinafter referred to as “the Corporation”).
3. **Applicability in case of projects of the Corporation:**

Applicable to all NEEPCO Projects, where the Concessionaire/Contractor and NEEPCO have entered into a Concession Agreement/Construction

Contract/Engineering Procurement Commissioning Contract for a PPP/EPC Project (hereinafter referred to as “the Project”), in which the Arbitral Tribunal has passed the Arbitral Award in favour of the Concessionaire/ Contractor and NEEPCO has challenged the Arbitral Award.

4. Steps required to be taken regarding switching over to the amended Arbitration Act:

- 4.1 In cases where the Arbitration proceedings are still under process (unless the same are at final stages) under the provisions of the pre-amended Arbitration Act, the Corporation would send a communication (under acknowledgement) to the Contractor/ Concessionaire to give their consent within the period specified therein to switch over to the amended provisions of the Arbitration Act;
- 4.2 Where the Contractor/ Concessionaire gives his consent to such a proposal, take up the matter with the Arbitration Tribunal for switching over to the conduct of proceedings under the amended Arbitration Act.
- 4.3 In matters where the Contractor/ Concessionaire do not respond to such a communication within the specified period or decline to give their consent, a list of all such parties shall be maintained for reporting under the Action taken report (ATR).

5 Steps required for release of 75% of the total eligible Payout amount:

Send a communication (under acknowledgement) to the eligible Contractor/ Concessionaire informing him about the details of the total payout obligation in terms of the CCEA decision, and requiring him to open an Escrow account and furnish Bank Guarantee for the purpose within a period specified in such communication. Since completion of these formalities may take some time, the Contractors/ Concessionaires may be initially given time of 30 days to do the needful, which may be considered for extension based on requests/ merits of each case.

5.1 Arbitral Award Escrow Account:

- (i) A separate designated Escrow Account (hereinafter referred to as “the Arbitral Award Escrow Account”), shall be opened and established by the Concessionaire / Contractor in accordance with Arbitral Award Escrow Account Agreement.

