

**ਡਾਇਰੈਕਟਰ ਸਿੱਖਿਆ ਵਿਭਾਗ (ਸੈਸਿ), ਪੰਜਾਬ, ਐਸ.ਏ.ਐਸ. ਨਗਰ  
ਚੌਥੀ ਮੰਜਿਲ, ਈ ਬਲਾਕ, ਪੰਜਾਬ ਸਕੂਲ ਸਿੱਖਿਆ ਬੋਰਡ ਕੰਪ. ਮੋਹਾਲੀ  
(ਕੋਆਰਡੀਨੇਸ਼ਨ ਸ਼ਾਖਾ)**

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ਸੇਵਾ ਵਿਖੇ

ਸਮੂਹ ਜਿਲ੍ਹਾ ਸਿੱਖਿਆ ਅਫਸਰ (ਸੈਸਿ), ਪੰਜਾਬ।  
(ਵੈਬਸਾਈਟ ਰਾਹੀਂ)

ਮੀਮੋ ਨੰ: 15/1-2019 ਕੋ (1)/202015641  
ਮਿਤੀ: 15 .01.2020

**ਵਿਸ਼ਾ: Guidelines For Proper Handling of Litigation Relating to  
Payments to Government Contractors.**

ਹਵਾਲਾ: ਪੰਜਾਬ ਸਰਕਾਰ, ਵਿੱਤ ਵਿਭਾਗ (ਵਿੱਤ ਬਜਟ-1 ਸ਼ਾਖਾ) ਦਾ ਪੱਤਰ ਨੰ:  
3/2/2018-4ਐਫ.ਬੀ.1/1008 ਮਿਤੀ 13.12.2019

ਉਪਰੋਕਤ ਵਿਸ਼ੇ ਤੇ ਹਵਾਲਾ ਅਧੀਨ ਪੱਤਰ ਦੀ ਕਾਪੀ ਆਪ ਨੂੰ ਇੰਨ ਬਿੰਨ ਪਾਲਣਾ  
ਹਿੱਤ ਭੇਜੀ ਜਾਂਦੀ ਹੈ।

15.1.2020  
ਸਹਾਇਕ ਡਾਇਰੈਕਟਰ (ਕੋ. ਸ਼ਾਖਾ)

ਪਿ. ਅੰ. ਨੰ: ਉਕਤ

ਮਿਤੀ. 15 .01.2020

ਉਤਾਰਾ ਹੇਠ ਲਿਖਿਆ ਨੂੰ ਇੰਨ ਬਿੰਨ ਪਾਲਣਾ ਹਿੱਤ ਭੇਜਿਆ ਜਾਂਦਾ ਹੈ:-

1. ਪੀ.ਆਰ.ਓ./ਸਕੱਤਰ ਸਕੂਲ ਸਿੱਖਿਆ, ਪੰਜਾਬ (ਸੂਚਨਾ ਹਿੱਤ)
2. ਡਿਪਟੀ ਕੰਟਰੋਲਰ (ਵਿੱਤ ਤੇ ਲੇਖਾ) ਬਜਟ, ਪੰਜਾਬ।

15.1.2020  
ਸਹਾਇਕ ਡਾਇਰੈਕਟਰ (ਕੋ. ਸ਼ਾਖਾ)

278640 गठन  
24/12/19

**No.3/2/2018-4FB1/1008**  
**GOVERNMENT OF PUNJAB**  
**DEPARTMENT OF FINANCE**  
**(FINANCE BUDGET 1 BRANCH)**

Dated, Chandigarh the 13<sup>th</sup> December, 2019

To

- 23/12/19
- i) All Administrative Secretaries to Government of Punjab.  
ii) All the Heads of Departments of the State of Punjab  
iii) All the Commissioners of Divisions,  
iv) All the Dy. Commissioners & District and Sessions Judges  
v) The Registrar, Punjab & Haryana High Court, Chandigarh  
vi) The Secretary, Punjab Vidhan Sabha.

**Subject:- Guidelines For Proper Handling of Litigation Relating To Payments To Government Contractors**

27/12/19  
Madam/Sir,

The Government has been facing litigation on account of issues relating to payments to Government Contractors. Resources both monetary and manpower are being spent on account of avoidable litigation with regard to such cases. The Hon'ble High Court has also observed that circuitous route of multiple litigation for release of contractual dues is being followed by Government Contractors.

2. In pursuance to the guidance given by the Hon'ble Punjab and Haryana High Court in COCP No. 1643 of 2019 titled Prem Chand Goel, V. Jaspreet Talwar, IAS and Ors. vide its order dated 20.08.2019 and the legal advice of the Advocate General, Punjab. These guidelines are being issued in continuation of the Finance Department Policy Regarding Payment to the Contractors No. 10/82/2017-2FE4/1151555 dated 23/01/2018 so that the Administrative Departments properly handle litigation in such matters.

3. The ADs should adhere to the following while handling legal matters pertaining to Government Contractors:

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I. Firstly, whenever a **legal notice/representation** regarding release of alleged contractual/payments is received by a Department, it **should be responded to expeditiously**.

II. Secondly, **while responding/replying to representation (s)** legal notice (s), the following should be kept in mind and ideally must form part of such reply issued by the Department:-

a) The provisions/general conditions/clauses of the contract executed between the parties, especially provisions relating to the manner in which payments are to be made and/or withheld, format of presentation of bill if any, interest accrual on such payments/dues if any, the preferred and agreed mode of dispute redressal etc., should be mentioned.

b) If the Department does not agree with any or all the claims as made in the legal notice/representation, the Department **should pass a speaking order** on all the issues raised in the representation and accordingly, accept partially or reject all such claims.

III. A **direction/order/judgment of the Hon'ble High Court wherein the Department has been asked to "consider" or "re-consider"** the claims/payments/dues of the contractor, must not be read nor interpreted to mean that the claims/payments/dues ought to be necessarily released. To "consider or "re-consider" claim/due/payment means that after examining the facts of the case, **the Department may still come to a conclusion that it is liable to be rejected**. Thus, the Department always can always reject a claim/payments/due, if, on facts found unwarranted. However, **a speaking order should be passed** in such a case.

IV. **Bringing Alternative Remedy Clauses to the notice of Hon'ble High Court:** It is also pertinent to note that when the Government Contractors/Petitions do come in writ petitions seeking directions to consider their representation for release of money claims/dues, it is imperative that the **Department brings such alternative remedy clauses to the notice of the Hon'ble High Court and avail the right to be heard** before passing of any orders/judgment disposing of the case. This should be examined in the light of the following:

A remedy sought by a Government Contractor/Petitioner in contractual matters under Article 226 of the Constitution of India is **ordinarily not maintainable on account of the Rule of exhaustion of alternate remedies**.

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There are only three contingencies/exceptions in which this rule would not apply, as held by the Hon'ble Supreme Court in **Whirlpool Corpn. V. Registrar of Trade Marks (1998) 8 SCC1**,

- (i) Where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) Where there is failure of principles of natural justice; or
- (iii) Where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (**reaffirmed in Sanjana M. Wig v. HPCL (2005) 8 SCC 242**).

Thus, in the absence of invoking the alternative remedy (s) available i.e. under the arbitration clause in the contract executed with the Department or for that matter a civil suit for recovery of amounts along with interest; a Writ Petition would not be maintainable. It has further been held by the Hon'ble Supreme Court that a **public law remedy cannot be availed for enforcement of private rights in the contractual realm** unless the matter involves a public law question or a question arising out of public law functions of the Department.

Therefore, the only remedy available to the Government Contractors/petitions in contractual matters is by resorting to **either arbitration proceedings or a civil suit and not by a public law remedy** such as a writ of mandamus under Article 226.

**V. Review application and/or Letters Patent Appeal:** It is also advised that whenever such matters are being disposed off in the urgent list itself passing an *ex-parte* order having issued notice to state counsel during the course of hearing, **such orders ought to be challenged by way of review application and/or letters patent appeal.**

4. All the ADs should ensure that the above guidelines are followed meticulously and all out efforts are made to handle the representations well in time so that the litigation is avoided altogether. In case, any case is filed on this account proper action should be taken in time so that the State is adequately and properly represented to avoid any loss on such account.

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The Punjabi Version of these instructions will follow.

Yours faithfully,

*Harwinder Singh*  
(Harwinder Singh)  
Budget Officer  
*HSW*

Endst. No.3/2/2018-4FB1/1009

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the Chief Secretary to Government of Punjab for kind information please.

*Harwinder Singh*  
Budget Officer  
*HSW*

Endst. No.3/2/2018-4FB1/1010

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the following for information and necessary action, please:-

1. Director, Treasury & Accounts, Punjab.
2. All District Treasury Officers and Treasury Officers.
3. PS/Secretary Finance, PA/ASF and PA/ITA
4. All Under Secretaries/ Superintendents, Finance Expenditure Branches and Finance Budget Branches with the directions to implement the above instruction in letter and spirit.
5. In-charge, TCS.

*Harwinder Singh*  
Budget Officer  
*HSW*

Endst. No.3/2/2018-4FB1/1011

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the Accountant General (A & E), Punjab, and Principal Accountant General (Audit), Chandigarh for information and necessary action.

*Harwinder Singh*  
Budget Officer  
*HSW*

278634  
24/12/19

No.3/2/2018-4FB1/1012  
GOVERNMENT OF PUNJAB  
DEPARTMENT OF FINANCE  
(FINANCE BUDGET 1 BRANCH)

Dated, Chandigarh the 13<sup>th</sup> December, 2019

To

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- 23/12/19
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- 23/12/19
- i) All Administrative Secretaries to Government of Punjab.
  - ii) All the Heads of Departments of the State of Punjab
  - iii) All the Commissioners of Divisions,
  - iv) All the Dy. Commissioners & District and Sessions Judges
  - v) The Registrar, Punjab & Haryana High Court, Chandigarh
  - The Secretary, Punjab Vidhan Sabha.

Subject:-Advisory For Prevention of Litigation Relating To  
Payments To Government Contractors.

27/12/19 Madam/Sir,

In addition to the Guidelines for Proper Handling of Litigation Relating to Payments to Government Contractors issued vide this office letter no. 3/2/2018-4FB1/1008-1011 dated 13.12.2019 there is an urgent need to have a system in place so that the such matters can be resolved without any litigation.

2. Accordingly, the following procedure needs to be brought in place:-

I. **Adherence to Budgetary Limits:-**The letter of award of works must specify the available sources of funds. In the case of budgetary funds, such availability should be backed by a letter of the Budget Control Officer of the Administrative/ Works Department. The Finance Department and the Budget Control Officer of each works department will have to maintain a running register of ongoing works to ensure that such works do not require payments in excess of available funds.

II. **Unfunded Works:-**In case of any unfunded project, the executing agency (through a specific decision of government at the competent level) shall declare

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that such works contracts will be based on a deferred payment system such as annuity payments, etc. Any such deferred liabilities shall be reflected in subsequent year's budget of the concerned Department/Agency as committed charges. Hence, the contract document must specify whether payment shall be made against running bills or shall be deferred.

### III. Dispute Resolution :-

- a) The contract document must contain clear provisions for resolving all kinds of disputes. This includes delay in works executed by the contractor and delay in payment by the Department. The Contractor must be penalized for delay in execution, just as the department should pay interest for delayed payment.
- b) Failure to penalize the contractor for lack of performance or delay in performance must be an actionable fault of the officer-in-charge. Monitoring such defaults requires online reporting of project progress. Hence, progress report must be submitted online to the Head of Department. The software should automatically deduct delays by contractor and trigger notice for default.
- c) The Head of Department must submit a quarterly progress report to the Secretary including all instances of contractor default and penalties imposed on contractors.

### IV. Project Completion Report:-

- a) Project Completion Report should be submitted whenever the project is scheduled to be completed. If the project is not completed on that date the officer concerned must explain the reasons for delay and penalties imposed for the same.
- b) When the project is actually completed a fresh Project Closure Report must be submitted. In case any defaults are pending or any dispute is pending, the same must be mentioned with reasons and remedial actions taken.
- c) After all disputes pertaining to project have been settled then a Project Finalization Report must be submitted by the officer-in-charge. This report must contain details of all costs incurred, time overrun, disputed settled, audit objections settled or pending, etc.

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**V. Transparency in Contract Management:-**

a) **External Quality Check:** - Every item of major work and every running bill raised by the contractor should be checked by an independent quality assurance consultant /independent engineer/independent auditor, as the case may be. Thus, every works contract should specify the name and address of the independent engineer responsible for quality assurance.

b) **Officer's responsibility for Quality:-** The independent engineer and the departmental engineer (JE/SDE/Xen) and Contractor/Agency should be responsible for quality of works for the rated life of project.

VI. **Quality Based payments:-** The system of quality assurance and payments in works department needs to be redesigned. The number of running bill payments or milestone payments needs to be reduced so that the supervisory and quality assurance staff gets sufficient time to check quality and seek remedial action by the contractor. This process will require higher investment of funds by the works contractors and reduce the probability of defects or bad quality. At the same time, it will reduce litigation.

VII. **Documentation of Quality:-** The documentation of quality assurance is either unspecified or perfunctory. The SDO and Xen who certify quality must provide a complete certificate stating that they have personally verified all quality parameters. Without this certificate, the Divisional Accounts Officer should not clear any payments. Photographs, GPS coordinates and Videos should be attached to each quality certificate, as also test reports.

VIII. **Quality Based Performance Appraisal of Contractors:-** The quality parameters achieved by each contractor should be uploaded on the internet and also displayed at the site on a prominent notice board which should be fixed for atleast five years after completion.

IX. **Basic Training on Contract Management:-** In order to implement this, adequate capacity building and training must be given in the following fields:-

- a) Contract design including RFP design and NIT design, etc.
- b) Contract correspondence including notices, replies inspection notices, default notice, legal replies, legal notices, etc.

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- c) Knowledge of contract law, taxation laws.
- d) Knowledge of arbitration law, dispute resolution process.
- e) Knowledge of basic accounts, liquidated damages, penalties fines.
- f) Quality Assurance: Technology and Processes.
- g) Labour law, Insurance law, regulatory laws.
- h) Digital Documentation and file maintenance.
- i) Engineering design, detecting and correcting design defects.

3. All the ADs should ensure that the above advisory is followed and a system is brought in place so that the litigation is prevented in such cases and the entire machinery is better equipped to handle such cases.

The Punjabi Version of these instructions will follow:-

Yours faithfully,

*Harwinder Singh*  
(Harwinder Singh)

Budget Officer  
*HS*

Endst. No.3/2/2018-4FB1/1013

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the Chief Secretary to Government of Punjab for kind information please.

*Harwinder Singh*  
Budget Officer  
*HS*

Endst. No.3/2/2018-4FB1/1014

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the following for information and necessary action, please:-

1. Director, Treasury & Accounts, Punjab.
2. All District Treasury Officers and Treasury Officers.

3. PS/Secretary Finance, PA/ASF and PA/ITA
4. All Under Secretaries/ Superintendents, Finance Expenditure Branches and Finance Budget Branches with the directions to implement the above instruction in letter and spirit.
5. In-charge, TCS.

*Harvinder Singh*  
Budget Officer

Endst. No.3/2/2018-4FB1/1015

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the Accountant General (A & E), Punjab, and Principal Accountant General (Audit), Chandigarh for information and necessary action.

*Harvinder Singh*  
Budget Officer