

AUDIT OF ESCALATION CLAIMS – IMPORTANT POINTS

1. What is the relevance of Condition No. 63 of I.A.F.W 2249 dealing with Escalation applicable to Contracts?

Condition No. 63 of I.A.F.W 2249 is **applicable only for all Term Contracts and contracts having a period of less than or equal to 2 years**. It is felt that where the Special condition prescribed by E-in-C has not been incorporated in the Contract, by default, Condition No. 63 of I.A.F.W 2249 would stand applicable. **In the case of work for Electrical Installation for lifts, the Special condition prescribed in Annexure XII of compendium of E-in-C Contracts should be included in the contract** and as would be included in the said Special condition, the provisions contained in this Special condition would supersede the provisions of Condition 63 of IAFW-2249 and **the provisions of Condition No. 63 of IAFW 2249 shall not be applicable in such cases**.

The conditions to be fulfilled for claiming payment in cases for which condition No. 63 is applicable are as under:–

- (1) There has been an actual and paid price increase in materials (Excluding schedule B Stores issued by MES to the contractor) which are actually incorporated in the work, and/or increase in Wages.
- (2) The increase is as a **direct result** of the coming into force of any fresh law or statutory rule or order (other than sales tax). By implication it **does not cover mere inflationary increase** in prices.
- (3) Such increase **exceeds ten percent**
- (4) The payment is to be **restricted for the excess over ten percent**
- (5) In the Opinion of the C.W.E the increase is not attributable to delay in the execution of the Contract within the control of the contractor.
- (6) The payment will not cover period beyond the contract date or extended date of completion of the work.
- (7) The same limit of 10% **on the negative side gives claim to the MES to make the contractor refund for the excess over 10%**.

2. What are the salient features of the special condition formulated by E-IN-C for escalation?

The salient features of the Special condition for Escalation claims formulated by E-in-C are as under:-

- (1) The authority under which this Special Condition has been approved is GOI MOD letter No. 4(4)/79/4413/D(Works II) dated 15/11/82 (for material and wages) and E-in-C letter No. 36073/EC/E8 DT 6/9/84 (for labour).
- (2) This Special condition can be added only for Contracts with completion period exceeding 6 months (**now 2 years or more as per DWP 2007**) and are not in the nature of Term Contracts. **In other words for Term contracts and contracts with completion period of less than 2 years, Condition No. 63 of IAFW 2249 would be applicable.**
- (3) The Special Condition has to be worded exactly or in a manner exhaustively covering the contents as prescribed by the E-in-C. The key sentences are *“Refer Condition 63 of General Condition of Contracts (IAFW 2249) Re-imbusement/refund on variation of prices. The condition 63 of the General Conditions of Contract shall be deemed to be modified to the extent mentioned herein after. Increase or decrease in prices of materials and fuel shall be adjusted on the basis stipulated hereinafter irrespective of the actual variation in prices (to the contractor)”*. The expression regarding modification of Condition 63 has to be specific and must not be left for implication.
- (4) Unlike Condition No. 63 of I.A.F.W 2249 proof of any increase in prices of material or fuel is not required. The increase in labour is regulated with reference to the minimum wages fixed under any law statutory rule or order. The escalation would be automatic signifying that it would cater for inflationary rises but strictly on the scale of wholesale price Index/ Labour index. **Needless to state there would be no additional coverage separately for any increase due to changes in law, statutory rule or order.**
- (5) The periodicity for working out the variations is three months. The first variation would be for the period of three months reckoned from the last due date for receipt of tenders. A simple check is done to

ensure that the Value of work claimed as done in the calculation sheet before the actual date of commencement of work as per Work Order is Nil.

- (6) RARs must be timed in such a manner that the gross value of work done up to the corresponding date is readily available.
- (7) The payment will **not** cover period beyond the contract date or extended date of completion of the work.

3. How is vg arrived at for calculation of VM?

The RAR has to be timed to instantly arrive at the value of work done on the critical date. There is no authority to arrive at a proportional value on the critical date otherwise than through actual measurement.

4. How is the weighted value of vg (value of work done for escalation on account of materials arrived at?

The Constant percentage, which is to be applied on vg/VG1, is specified in Appendix of the E-in-C letter. These are only maximum percentages. Within this limit the exact percentage applicable must be spelt out in the Agreement.

APPENDIX A TO E-IN-C BRANCH LETTER NO. 36073/EC/E8 DT 18/6/95

SNO	TYPE OF WORK	MATERIAL KM	LABOUR KL	FUEL KP	T&P & TPT AT SITE
1	MARRIED ACCOMMODATION	60.00	20	1.5	35.00
2	OTM ACCOMMODATION	60.00	20	1.5	35.00
3	MULTISTOREYED MARRIED ACCOMMODATION	58.00	21	2	4.00
4	FACTORY TYPE BUILDING INVOLVING STEEL SUPER STRUCTURE	58.00	22	1	4.00
5	ADMIN BLOCKS, OFFICERS MESSES, INSTITUES AUDITORIUMS HOSPITAL BUILDINGS ETC.,	60.00	20	15	35.00
6	RCC OM RESERVOIR	51.00	29	2	3.00
7	PILING WORKS	51.00	25	3	6.00
8	AIR FIELD PAYMENT	59.00	17	3	6.00

9	ROAD WORKS NOT INVOLVING SUBSTANTIAL EARTH WORK	57.00	21	2	5.00
10	CENTRAL SEWAGE DISPOSAL PLANTS WATER PURIFICATION PLANTS ETC	65.00	18	0.5	1.50
11	ELECTRIFICATION WORKS ETC.,	70.00	13.5	0.5	1.00
12	CENTRAL AIR CONDITIONING WORKS	70.00	13.5	0.5	1.00

In calculating the escalation for materials, the value of workdone should not be adjusted with the Materials brought at site (vs) or Value of Schedule B stores (vb) or the items of Star Rates before applying the Constant percentage.

5. How is the value of VM arrived at?

The value of workdone (not including therein the value of Materials brought at site (vs) or Value of Schedule B stores (vb) or the items of Star Rates) should be adjusted with the applicable percentage. Only from the resultant figure the Value of materials at site brought (vs- should not be after the original or extended completion date) should be added and the value of Schedule B stores and items of star rates (vb) should be deducted. The VM arrived at for a particular quarter would be VM2 for that quarter and would become VM1 for the next quarter.

$$VM = (KM \times VG) / 100 + (VS - VB)$$

6. How is the value of EM (valuation for escalation for material for a particular quarter) arrived at?

EM is arrived by applying a percentage (calculated by dividing the difference between the Material index for the relevant quarter and the Material Index at the beginning as on the last date of opening of the tender by the Material Index at the beginning as on the last date of opening of the tender) and applying on the difference between VM2 and VM1. The Index if not available on audit records is to be obtained from the Executives.

$$EM = (VM2 - VM1) \times (W1 - WO) / WO$$

7. How is the value of EP (Valuation for escalation on account of fuel for a particular quarter) arrived at?

EP is arrived by applying a percentage (calculated by dividing (a) the difference between the Fuel index for the relevant quarter and (b) the Fuel Index at the beginning as on the last date of opening of the tender by (b) the Fuel Index at the beginning as on the last date of opening of the tender i.e., $(a-b) / b$) on the weighted value of work done [value of workdone (difference between the value of workdone during the current and previous quarter) multiplied by the applicable percentage for Fuel depending on the Type of contract as per table given under Answer to Question No. 4) during the period reckoning]. It is important to note that the E-in-C Instructions clearly stipulate that the VG1 on which the differential Index percentage is to be applied, should be the gross value of work done during the period of reckoning using values of Vg for calculation of VM1 and VM2 during calculation of escalation of material. **This means that the Star rates should not be deducted from the value of vg).**

$$EP = (KP \times VG1 / 100) \times (F1-FO) / FO$$

8. How is the value of EL (Valuation of escalation on account of wages arrived at?

EL is arrived by applying a percentage (calculated by dividing (a) the difference between the Minimum Wages index for the relevant period and (b) the Minimum Wages Index at the beginning as on the last date of opening of the tender by (b) the Minimum Wages Index at the beginning as on the last date of opening of the tender i.e., $(a-b)/b$) on the weighted value of work done at contract rates [value of workdone at contract rates less value of work done at Star rates / prime cost sums (difference between the value during the current and previous quarter) multiplied by the applicable percentage for Labour depending on the Type of contract as per table given under Answer to Question No. 4) during the period reckoning]. It is significant to note the difference between calculation of VG1 for Fuel and for Labour. **In the case of Fuel, the Star rates / prime cost sums are not to be deducted from the VG1 whereas in the case of Labour the Star rates and Prime cost sums are to be deducted from the VG1.**

$$EL = (KL \times VG1 / 100) \times (L1-LO) / LO$$

9. How should the value of escalation for a quarter be reckoned when the value arrived at for a quarter is a minus figure?

Sometimes in the Escalation claims when the figure worked out for a quarter is a minus figure it is remarked that the minus figure is on account of excess issue of Schedule B Stores and hence the minus figure is ignored and accepting zero as the figure. Doubt arises as to whether this is tenable.

Audit has to examine the case of excess of issue of Schedule B stores with reference to Condition No. 10(B) of I.A.F.W 2249. As per this condition, for the supply of materials listed in Schedule "B" the Contractor shall give a reasonable notice in writing of his requirements to the Engineer-in-Charge in accordance with the agreed phased programme. Therefore if the Contractor is issued with Excess Stores it is clearly a violation of the aforesaid condition and over and above the advantages obtained for this violation, the contractor cannot be further given a favour by ignoring the minus figure in the escalation claim.

In the absence of sanction of Govt. of India Ministry of Defence (duly concurred by MOD (Fin) the minus figure in any particular quarter has to be reckoned as such in the overall summary and adjusted alongside plus figures in other quarters and cannot be substituted with zero.

10. Can Escalation value be calculated and paid along with the RAR Or Should it necessarily be paid with Final Bill only?

As per E-in-C Instructions once the amount adjustable for any quarter is worked out the same shall be adjusted as and along with the advance on account payment under Condition 64 of IAFW-2249 in the following RARs. It must equally be noted with caution that the amount payable relevant to work done and materials collected in any quarter will be worked out after firm whole sale price indices(not provisional) for the relevant quarter are available. Hence subject to the above condition the escalation shall be worked out and paid along with the RAR. Since it would become a Contractual right to the Contractor to claim escalation along with RAR as per above procedure, the AAOsGE should forward such RARs for Pre-Audit by Main Office of CDA, (where escalation claims are required to be approved by CDA) duly informing the GE in this regard.

11. What is the significance of escalation in reckoning the value of contract for the purposes of calculating retention money and liquidated damages?

For the purposes of calculating retention money and liquidated damages, the value of contract as revised by the above price variation will be taken into account.

12. For what types of Contract are escalation clauses applicable?

The Govt. of India letter stipulates that the special condition shall be included **in all tenders** in which (a) the period of completion has been specified as more than **6 months (now 2 years or more as per DWP 2007)** and (b) the type of contract is not “Term Contract”.

13. Whether the escalation amount has to be clubbed with the work done for comparing the deviation limit?

As per HQrs Office letter No. 18082/AT-X/XV dated 6/10/2005 (CDA Chennai Part I Office Order No. 91 dated 8/11/05) the “final cost of service” for the purpose of Para 9(d) of DWP (1986) (**now para 2(h) of DWP 2007**) would definitely include the amount of escalation. Therefore if the final cost of a work service inclusive of escalation exceeds the Administrative Approval amount by more than the 10% tolerance limit, revised Administrative Approval /Financial Concurrence would be required.

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