



EXPLANATORY NOTE ON SOPs

Subject: **Settlement of Claims and Disputes as Per SOPs Approved by NHA Executive Board – 107th Meeting of November 04, 2002**

1. P&CA Section, originally known as Contracts and Specifications Section (C&S), was revamped precisely because NHA and Contractors were continuously facing problems with institutional redressal to their VOs, EoT, Claims, etc. Aim was also to address legal interpretation of various contract clauses and anomalies in an appropriate/professional manner.
2. The Planning Wing, recognizing the ad hoc approach prevalent in HA, prepared standard operating procedures (SOPs) and the same were got approved from NHA Executive Board (107th meeting of November 04,2002). The SOPs were also deliberated upon in the Ministry of Finance who appreciated the effort.
3. The Planning Wing has noted that the SoPs are not being followed in letter and spirit. Therefore, the P&CA Section is issuing the SOPs afresh with elaboration and methodology to be adopted for addressing such cases for clarity purpose so that these are followed in entirety for addressing Contractors and Consultants EoTs, VOs, Settlements, etc.
4. Basic principle still remains the same viz upon receipt of such requests, following the procedure already stated in contract document, the same be attended by project authorities and their recommendations very clearly spelt out, should reach GM(Concerned). The GM (Concerned) with the assistance of his staff must review and submit clear cut recommendations to Member (Concerned)/Chairman NHA / Executive Board for approval, if no conflict is observed.
5. If there is a conflict arising out of such issues and the project authorities require advice or redressal of any issue/case, the same may be referred to the CA Cell of P&CA Section through the respective Member. Case referred to CA Cell, must contain a comprehensive brief along with a self contained document with the subject spelt out upfront, identifying the requirement in an unambiguous and clear terms.

6. This Explanatory Note contains methodology and basic requirement for such submissions to CA Cell. It also contains a template of data sheet and a backup data form for each claim, indicating how such case is to be prepared and submitted to CA Cell. To further clarify the process of different cases as per approved SOPs, following flow chart diagrams are also enclosed:

- a. Contractor initiated the dispute.
- b. Employer initiated the dispute.
- c. Process after receiving of the Engineer's decision.
- d. Process of amicable settlement.
- e. Process of arbitration including appointment of Legal Counsel & Arbitrator.
- f. Full and final settlement.

7. These instructions are issued as desired by the Chairman NHA who observed that in majority cases, there are too many time losses and approach for presentation of such cases is not upto the mark.

8. All concerned are, therefore, requested to strictly adhere to above procedure, so that NHA retains its credibility as an apex professional institution playing a leading role for road infrastructure development.

9. Needless to mention that NHA Code, and all relevant Rules, Regulations and Policies are to be followed as usual, and as mandated from time-to-time.



21.5.13

(AbdusSamad)
General Manager (P&CA)

Encl: As above.

- All Members
- All General Managers (HQ/Region/Projects)

Copy to:

- Secretary NHA
- PS to Chairman NHA

EXPLANATORY NOTE ON
STANDARD OPERATING PROCEDURE (SOP) FOR SETTLEMENT OF
CLAIMS AND DISPUTES

1. Standard Operating Procedure (SOP) for the Settlement of claims and disputes was approved by NHA Executive Board in its 107th meeting held on November 04,2002 (Copy of SOP placed at **Annex-A**). As per NHA Code Table-III – 16 of Chapter-3 (Copy Placed at **Annex-B**), composition of the Settlement Committees for the settlement of contractual disputes/claims are as under:

Stage-I Committee

GM(P&CA)	-	Chairman
GM(Concerned)	-	Member
Director (Legal)	-	Member
Director (P&CA)	-	Secretary

Stage-II Committee

Member (Finance)	-	Chairman
Member (Planning)	-	Member
Member (Ops/Const)	-	Member
GM(P&CA)*	-	Secretary

*) He shall be a non-voting member

2. NHA is engaged in hundred of billion rupees contracts and disputes deriving out of these contracts is also huge in terms of claims against NHA.

3. The bidding document of projects (funded by GoP) are being prepared by using the PEC documents Standard form of bidding document (Civil works) which has been notified by Planning Commission, government of Pakistan vide Notification No. 8(60) WR/PC/2008 dated 12th February 2008. Standard form of bidding documents (Civil Works) incorporates FIDIC General Condition of Contract Part-I (1987 reprinted in 1992 with further amendment), Particular Condition of Contract Part-II, Instructions to Bidders and sample appendices required for bidding. The three parties for the execution of contract as per FIDIC (1987 reprinted in 1992 with further amendment) are as under:

- a. The Employer means the person named as such in Part-II.
- b. The Contractor means the person whose tender has been accepted by the Employer.
- c. The Engineer means the person employed by the Employer to act as the Engineer for the purposes of the Contract.

Role of the Engineer may differ in case the contract document is based on format of donor agencies.

4. Following Clauses of Conditions of Contract (PEC document) are regarding the procedure for claims:

- a. Clause 53.1 Notice of Claims
- b. Clause 53.2 Contemporary Records
- c. Clause 53.3 Substantiation of Claims
- d. Clause 53.4 Failure to comply
- e. Clause 53.5 Payment of Claims

(Copy of clauses are placed at **Annexure-C**)

5. Following clauses of conditions of contract (PEC documents), are regarding the settlement of disputes:

- a. Clause 67.1 Engineer's Decision
- b. Clause 67.2 Amicable Settlement
- c. Clause 67.3 Arbitration
- d. Clause 67.4 Failure to comply with Engineer's Decision

(Copy of clauses are placed at **Annexure-C**)

Number of clauses and role of the Engineer may differ in case the contract document is based on format of donor agencies.

6. Time limit mentioned in the PEC document for various activities is as under:

a	Engineer's Decision	Engineer has to make decision within 84 days from the date of receipt of request for Engineer Decision.
b	Notice for intention to commence arbitration	Within 70 days after receipt of Engineer's decision. In case Engineer's decision is not received within stipulated time, notice for intention to commence arbitration be given on or before the 70 th day after the day on which the period of 84 days expires.
c	Amicable Settlement	Attempt for amicable settlement may be made where notice for intention to commence arbitration has been served.
d	Commencement of Arbitration	Arbitration may be commenced on or after the 56 th days after the day on which notice of intention to commence arbitration has been given.

Time limit may differ in case the contract document is based on format of donor agencies

7. To implement the SOPs it is necessary to understand the spirit of contract documents. It is also imperative to remain within rules and regulations during the currency of various activities with reference to contract administration.

8. To further clarify the processes related to disputes and settlement, as per approved SOP, following flow chart diagrams are also enclosed as **Annexure-D**:

- a. Contractor initiated the dispute
- b. Employer initiated the dispute
- c. Process after receiving of Engineer decision
- d. Process of amicable settlement
- e. Process of arbitration including the appointment of legal Counsel and appointment of Arbitrator.
- f. Process of full and final settlement

9. The SOPs requires project authority to follow a mechanism whereby when the matter reaches P&CA, (If, it reaches P&CA) must have a comprehensive picture of the contract tabulated in the form that it contains salient feature of award with dates and competent authorities indicated, reaching the stage which is required to be attended/addressed through the correspondence. A template of Data Sheet along with backup data form for each claim is attached at Annex-E for serving the purpose of an example how the case is to be presented by the project authorities to the concerned incumbent and if required by the concerned member to the CA Cell/Settlement Committee.

COPY OF SOP
Approved by NHA EXECUTIVE BOARD'S
107TH MEETING HELD ON 04-11-2002



NATIONAL HIGHWAY AUTHORITY

Office of the General Manager (C&S)

27 Mauve Area, G-9/1, Islamabad Tel: 051-9260565,051-9260419

No. 2(142)/DIR(CONT)/NHA/02/836

December 23, 2002

Subject: **Standard Operating Procedures For:**
i. Responding to Engineer's Decision
ii. Settlement of Claims and Disputes
iii. Arbitration Cases

The subject SOPs duly approved by 107th Executive Board meeting held at November 04th, 2002 is enclosed for your information and necessary action.

-Sd-
Col (R) (Muhammad Saifullah)
General Manager (C&S)

Distribution:

- DG (Admn)
- All GMs
- Executive Director (RAMD)
- Director (Legal)
- Director (Accounts)

Copy to:-

- Chairman NHA
- Member (Operations)
- Member (Planning)
- Member (Finance)

WORKING PAPER

Agenda Item No. _____

Subject: **STANDARD OPERATING PROCEDURES FOR:**

- i. Responding to Engineer's Decision**
- ii. Settlement of Claims and Disputes**
- iii. Arbitration Cases**

General:

The construction contracts of National Highway Authority are based on FIDIC-IV construction contract form in line with the standard form of bidding documents prepared by Pakistan Engineering Council. This is in accordance with Article-26, Chapter-III of NHA Code. NHA launched a massive construction programme in the early years of its inception (1991 to 1993). Indus Highway Project, Lahore-Islamabad Motorway Project, Islamabad-Peshawar Motorway Project and Rehabilitation/Dualization of these contracts, many factors led to raising of large claims by the contractors.

Development of Disputes:

2. The fact that FIDIC forms of contract recognize and set down procedures for pursuing claims is a testament to the propriety of the concept and practice of paying additional cost of the claims raised in NHA contracts turned into disputes on account of primarily the absence of any standard procedures in HHJA to deal with such cases. The practice of escaping decision making to avoid responsibility has been observed on part of NHA then. Nevertheless, contractual disputes are construction contract norm. Construction contracts, therefore, cater for the provisions for settlement of disputers. The picture with respect to these claims and disputes is horrendous in dimensions and a glimpse of claims lodged until now, is placed at Annex-I. The results of arbitration and litigation cases contested so far have not been encouraging for NHA. This situation entailed in piling up of huge liabilities upon NHA and the confidence of the construction industry in NHA has observed waning.

Desire for Dispute Resolution:

3. The exhaustion of considerable time and money in arbitration and litigation cases in the last few years made NHA feel the desire for settlement of disputes with contractors on fair, equitable and reasonable grounds to reach a consensual agreement, if possible.

Strategy to Resolve Disputes:

4. NHA has prepared a two-tier committee strategy to attend to these intricate issues and arrive at settlements, wherever possible. These committees comprising officers from all the concerned sections shall debate each and every dispute, held negotiations with the contractors and develop consensus after reviewing the cases in depth. NHA shall adopt the policy of open house debate on such disputed issues to ensure transparency and fairness. The composition of the committees is placed in Table-1.

Standard Operating Procedures:

5. It is now intended to formulate appropriate standard operating procedures for dealing with cases related to settlement of claims and disputes to ensure transparency in the procedure with the objective to achieve best possible results for NHA on best effort basis. Following are the three SOPs prepared for dealing with such cases;

Part-I

Standard Operating Procedure for responding to Engineer's Decisions

Part-II

Standard Operating Procedure for Settlements

Part-III

Standard Operating Procedure for Arbitrations

These Procedures are enclosed as Part-I, Part-II and Part-III.

Decision Solicited:

6. Executive Board is requested to accord approval of the SOP enclosed hereof as part-I, Part-II and Part-III to be followed by NHA for dealing with cases involving Engineer's Decisions, Settlements and Arbitration cases.

CLAIMS AND DISPUTES

Sr. #	Contractor	Name of Contractor	Disputed Amounts (Rs. in million)
1.	STFA	LBP, IHP7&12A	3,243
		IHP7&12A	294
2.	Satiagumi	IHP 1&6	500
3.	J&P	8BI&8BII	115
		MBRP 7005	500
4.	HCCL	ACW N-5 (04 Contracts)	1,400
5.	SKB	Ut-Bla, U-RY Khan	500
6.	Astaldi	Sukker Bypass	1,000
7.	Stratus	IIIA N-40	1,000
8.	Put Sarajevo	Lahore-Okara	562
9.	Sambu	Multan-Mianchanu	1,400
10.	NLC	KRACW	1,000
11.	Bayinder	M-I	24,000
12.	Agha M&B	MBRP 7026	38
Total Financial Implications			35,552

TABLE-I

STAGE-I COMMITTEE FOR AMICABLE SETTLEMENT

1.	General Manager (C&S)	Chairman
2.	General Manager (Ops &Coord)	Member
3.	General Manager (Fin/Audit)	Member
4.	Regional General Manager or his Rep.	Member
5.	Director (Legal)	Member
6.	Director (C&S)	Member
7.	DD/AD (C&S)	Secretary

STAGE-II COMMITTEE FOR AMICABLE SETTLEMENT

1.	Member (Finance)	Chairman
2.	Member (Planning)	Member
3.	Member (Operations)	Member
4.	General Manager (C&S)	Member / Secretary

Note:

1. The Committee shall assemble in the first week of every month to discuss all such issues unless earlier required by the Chairman of the Committee.
2. The Chairman of the Committee(s) may co-opt any other member(s) and/or form a sub-committee depending upon the nature of claim(s).

Part-I

Standard Operating Procedure (SOP) for Responding to Engineer's Decisions under Clause 67 of COC

Contractor's Initiated Disputes

1. The copy of the Contractor's request for Engineer's decision under clause 67 of COC shall be referred to Member Operation immediately when received in the concerned project office/Chairman's office.
2. Member Operations may choose to resolve the dispute with the approval of the Chairman or refer the case to C&S Section, in which C&S Section shall write to the Engineer immediately that the Employer is examining the case and shall communicate Employer's point of view on dispute under consideration within a period of four weeks.
3. C&S Section shall examine the case and shall solicit comments of the concerned Project Director / General Manager who shall be bound to reply within one week of receipt of request for comments along with documentary evidence.
4. C&S Section shall draft letter to the Engineer bearing signatures of concerned Project Director in the light of provisions of contract containing NHA's position which shall be issued after the approval of Member (Planning) and concurrence of Member (Operations).
5. The Engineer's decision under Clause 67 of COC when received in the concerned or Chairman NHA office shall be referred to C&S Section immediately through Member Operations.
6. C&S Section shall examine the Engineer's decision and submit the working paper to the stage-I Committee, which shall finalize recommendations for the stage-II committee. Refer Table-1 for composition of the committees.
7. The Stage-II committee shall submit the case to the Chairman NHA for decision along with its comments as to the admission of the Engineer's decision or otherwise.
8. C&S Section shall submit Notice for Intention to commence Arbitration under Clause 67 of COC to the Chairman NHA through Member (Planning) for his signatures in case Chairman decides to challenge the decision.
9. The Notice for Intention to commence Arbitration shall be issued by C&S Section after signatures of Chairman NHA.
10. The said notice shall be circulated to the concerned Project Director, General Manager, Director (Accounts) and Director (Legal) by the C&S Section.

EMPLOYER'S INITIATED DISPUTES

1. The Project Director may decide to refer through General Manager (Operations) to C&S Section for opinion on any issue in case he differs with the Engineer.
2. In such case C&S Section shall render its opinion with respect to the contractual position which shall then be referred to Legal Bureau for legal advice.
3. The case shall then be submitted to General Manager (Operations) who shall submit the case to Member (Operations) for decision along with its comments.
4. The office of General Manager (Operations) shall then communicate the decision of Member (Operations) to Project Director for requesting Engineer's decision under Clause 67 of otherwise.
5. Steps 5 to 10 stated herein above shall thereafter be followed in case Engineer's opinion is confronted.

Part-II

Standard Operating Procedure (SOP) for Responding to Settlements

1. National Highway Authority (NHA), as a matter of policy has undertaken to settle long outstanding claims of the contractors in the mode of amicable, post arbitration award, and out of court settlements. Two stage committees have been approved by the Chairman NHA for the purpose. Composition of the committees is in Table-I. It is now intended to formulate appropriate SOP to ensure transparency in the procedure with the objective to achieve best possible results for NHA on best effort basis.
2. Settlements of the claims of services, suppliers and contractors can vary in nature, depending upon various stages reached such as amicable settlement (settlement prior to arbitration as per notice served on the parties with regard to issues indicated) or (if the parties agree can be transformed into final settlement of disputes with respect to entire project), post arbitration settlement to similar effect as for amicable settlement except that the settlement agreement shall be submitted to the arbitrator and followed up until the rule of court is made. Out of court settlement, which will also have a similar arrangement except that the settlement agreement shall be submitted to the court. All the forms off settlement agreements shall be settlement Agreements with a variation only Final Settlement Agreement which shall require discharge from the contractor.
3. Following steps shall be taken as standard operating procedure (SOP) for reaching settlements:-

STEP-1

Claims shall be received in the operation wing of NHA along with the Engineer's decision/point of view and with the review of the supervisory consultant and Project Director or concerned official of NHA from the office of the concerned GM. The concerned GM must endorse his recommendations on the principle and quantification of the claim as submitted by the concerned PD. The claim and its allied correspondence shall be reviewed by the operations wing and if all essentials are in order, the case may be referred to contractors section.

STEP-2

The contracts section shall review the claims in the light of contract administration reports, which contains details of claims being submitted and actions in hand. The contract section will review in depth the principles and the quantification of the claims and prepare working paper for the review of first stage committee.

STEP-3

The first stage committee shall meet and deliberate on the claim/claims and submit its recommendations to the second stage committee.

STEP-4

The second stage committee shall review the whole case and submit its recommendations to the chairman NHA. The Chairman NHA may like to approve the recommendations or may desire to get the whole case reviewed by any forum of his choice.

STEP-5

Once approved by the Chairman, the payment shall be made as per prevailing procedure as mended from time to time.

➤ As for the claims in backlog, where the projects have been completed claims are in various stages such as pre or post arbitration, courts etc, the working paper shall be prepared by contracts section through a sub-committee of the first stage committee comprising of the following:-

1. Representative of contract section to be nominated by GM(C&S)
2. Representative of accounts win to be nominated by GM(Finance)
3. Representative of Operation wing to be nominated by GM (Ops) & Co-ord)

The sub-committee nominations shall be on case to case basis. The sub-committee shall do re-appraisal of the claims including that of the principle of the claim as well as the quantification and after obtaining approval of the Chairman of first stage committee may enter into preliminary negotiation with the party as well. No single person shall conduct any negotiation with any party unless authorized by Member Operations or the Chairman NHA in writing.

The working paper of the sub-committee shall contain the following as minimum requirement:-

SETTLEMENT OF CLAIMS

PROJECT _____

- **Stage of Settlement:**
- **No. of Issue:**

PART-I

- Employer
- Contractor
- Supervisory Consultant
- Engineer
- Dates of Commencement & Completion

PART-II

- **HISTORY OF THE CLAIM**(Background)
(Discussion on claim being under the provisions of contract and jest of correspondence with regard to the claims by the Contractor, the Engineer and the Project Director)
- **ENGINEER'S DECISION**
(Reproduce the decision of the Engineer (if any or his views for or against consideration)
- **EMPLOYER'S CORRESPONDENCE ON THE ISSUES**
(Jest of the noting and letters by the Employer/NHA. Views given by various NHA personnel at various times)
- **RESULTS OF AMICABLE SETTLEMENT**
(Results of amicable settlement meeting (if any) prior to proceeding for arbitration as per the notice given by the party)

PART-III

DETAILS OF CLAIMS (Documents to be attached)

1. Contractor's Claim
2. Engineer's Appraisal and Quantification of the Claims (irrespective of his agreeing or disagreeing of the claim)
3. NHA (C&S) Appraisal

- **NEGOTIATION RESULTS**

➤ In such cases where a contractor has requested for last and final settlement of claims and disputes pertaining to the cases in pre-current-post arbitration stages involving more than one contract and more than one dispute, the procedure of settlement shall only commence upon reference of case(s) to Stage-I Committee by the Chairman NHA or Member (Operations). Such cases shall be appraised by Contracts Section and then presented to the Stage-I Committee for Settlement of Disputes through the working paper(s) and /or detailed presentation(s) including both the statement of claims submitted by the Contractor before the Arbitrator and the Replies to those submitted by NHA for examination and review on the format stated herein below.

LAST AND FINAL SETTLEMENT OF CLAIMS

PROJECT _____

- **STAGE OF SETTLEMENT:**
- **NO. OF ISSUE:**

PART-I

- Employer
- Contractor
- Supervisory Consultant
- Engineer
- Dates of Commencement & Completion

PART-II (Presentations/Discussions)

- Statement of Claims
- Engineer’s Decision
- Employer’s Correspondence on the Issues
- Results of Previous Amicable Settlement

PART-III

- **NEGOTIATION RESULTS**

Note: Presentations shall be kept on record by Contracts Section

Part-III

Standard Operating Procedure (SOP) for Responding to (For Arbitration Cases)

Notice for Intention to Commence Arbitration

1. One the Notice for Intention to commence Arbitration is received from the Contractor by the employer the same shall be forwarded to Legal Bureau. Director (Legal) shall ensure its immediate circulation to Member Operations, General Manager (C&S), General Manager (Concerned), Project Director and Accounts Section of NHA.

AMICABLE SETTLEMENT

2. Notice for Amicable Settlement shall be referred o Chairman of first stage committee, when received in the concerned office/section of NHA. The Chairman first stage committee shall refer the case to the sub-committee for appraisal. The sub-committee shall review the case and prepare working paper in line with the requirement stated above (format). The working paper shall be submitted to the first stage committee for amicable settlement described in Table-I for discussion which shall submit its recommendations to Chairman NHA. Through second stage committee, with respect to the course of action to be adopted in the meeting for amicable settlement. Refer SOP for settlements for details.

3. It the attempt of amicable settlement fails, then the case shall be referred to the Director (Legal).

APPOINTMENT OF LEGAL COUNSEL

4. Director (Legal) shall then proceed for appointment of Legal Counsel with written consent of General Manager (Contracts) in consultation with the proposed Legal Counsel indicting his willingness and professional fee.

5. Director (Legal) shall submit case seeking approval of Chairman NHA through Member (Operations).

7. All the correspondence in this connection shall thereafter be referred to Director (Legal).

APPOINTMENT OF ARBITRATOR

8. Director (Legal) in consultation with General Manager (Contracts) and Legal Counsel shall submit proposal suggesting three names of Arbitrators with their willingness and acceptance of fee to the member (Planning) who shall solicit approval of the Chairman NHA for proceeding further in the matter.

9. The proposed names of arbitrators from NHA shall be communicated to the Contractor by the Director (Legal).
10. The appointment of Arbitrator shall be confirmed if the Contractor concurs to any one of the proposed arbitrators, and if the contractor does not concur, then appointment of Arbitrator shall be governed by Section-8 of Pakistan Arbitration Act of 1940, wherein the NHA Legal Counsel appointed for the Arbitration case shall draft the case and argue the same before the Court without any additional cost. Director (Legal) shall ensure that the agreement with legal Counsel contains this provision.

ARBITRATION PROCEEDINGS

11. Statement of claims submitted by the contractor when received by the Legal Counsel during the Arbitration proceedings shall be referred to C&S Section for furnishing their comments in consultation with the respective project authorities/Engineers in the light of provisions of contract, within four weeks.
12. The comments of contracts section shall be submitted to Legal Counsel through Director (Legal) for drafting replies. The Legal Counsel shall be authorized to call any NHA official with the approval of competent authority for his assistance.
13. Director (Legal) would ensure that replies drafted by the Counsels are submitted to the Chairman NHA through Member (Planning) duly vetted by General Manager (Contracts) before submission to the Arbitrator.
14. Member(s) of NHA nominated team may attend the arbitration proceedings and inform Member (Planning) and Director (Legal) about the performance to NHA Counsel.

ARBITRATION AWARD

15. The Arbitration Award shall be submitted by the Legal Counsel to the director (Legal) along with his recommendations to the admission or otherwise.
16. Director (Legal) shall submit the Award to the committees detailed in Table-I for examination and onward submission with its recommendations to the Chairman NHA for decision.

CHALLENGING THE ARBITRATION AWARD

17. If NHA decides to challenge the Award, the same Legal Counsel or any other Counsel approved by the competent authority shall be engaged, however, in case of rejection of previous Counsel, by recording in writing the reasons for his rejection. The Legal Counsel shall file the objection to the Award in the Court of Law within the due time as provided in Arbitration Act.

18. The decision of Civil Court shall be analyzed by NHA and the course of action to be adopted, the same way as detailed in 15, 16& 17 above.

COPY OF TABLE-III-16
CHAPTER-3 OF NHA CODE 2005

SETTLEMENT OF CLAIMS/DISPUTES

111. The SOPs approved by the Board shall be followed for settlement of contractual disputes/claims. The composition of the settlement committees is given in Table-III-16:

Table:III-16

STAGE-I: COMMITTEE FOR AMICABLE SETTLEMENT	
GM(P&CA)	Chairman
GM(Concerned)	Member
Director (Legal)	Member
Director (P&CA)*	Secretary
*He shall be a non-voting member	
STAGE-II: COMMITTEE FOR AMICABLE SETTLEMENT	
Member (Finance)	Chairman
Member (Planning)	Member
Member (Ops/Const.)	Member
GM(P&CA)**	Secretary
** He shall be a non-voting member	

COPY OF CLAUSES PEC DOCUMENTS
(67.1, 67.2, 67.3& 67.4)

STANDARD FORM OF BIDDING DOCUMENTS (Civil Works)

Available on PEC website (www.pec.org.pk)
and
PPRA website (www.ppra.org.pk)

(Harmonized with PPRA Rules)

June 11, 2007



**PAKISTAN ENGINEERING COUNCIL
ISLAMABAD**

At the end of each month the contractor shall deliver to the Engineer a period statement of the labour, materials and contractor's equipment, except as aforesaid, used and the contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorize payment for such work, either as day work, on being satisfied as to the time employed and the labour, materials and contractor's equipment used on such work, or at such value therefore as shall, in his opinion, be fair and reasonable.

Procedure for Claims

53.1 Notice of Claims

Notwithstanding any other provision of the Contract, if the contractor intends to claim any additional payment pursuant to any clause of these conditions or otherwise, he shall give notice of his intention to the Engineer with a copy to the Employer, within 28 days after the event giving rise to the claim has first arisen.

53.2 Contemporary Records

Upon the happening of the event referred to in sub-clause 53.1, the contractor shall keep such contemporary records as may reasonable be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

53.3 Substantiation of claims

Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the contractor shall send a final account within 28 days of the end of the effects resulting from the event. The contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.

53.4 **Failure to Comply**

If the Contractor fails to comply with any of the provisions of this clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to sub-clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under sub-clause 53.2 and 53.3).

53.5 **Payment of Claims**

The contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to clause 60 such amount in respect of any claim as the Engineer after due consultation with the Employer and the contractor, may consider due to the contractor provided that the contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim the contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the contractor of any determination made under this sub-clause, with a copy to the Employer.

CONTRACTOR'S EQUIPMENT, TEMPORARY WORKS AND MATERIALS

54.1 **Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works**

All contractor's equipment, temporary works and materials provided by the contractor shall, when brought on to the site, be deemed to be exclusively intended for execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, contractor's equipment, temporary works, plant or materials to or from the site.

54.2 **Employer not liable for damage**

The employer shall not at any time be liable, save as mentioned in clauses 20 and 65, for the loss of or damage to any of the said contractor's equipment, temporary works or materials.

54.3 **Customs Clearance**

The Employer will use his best endeavors in assisting the contractor where required in obtaining clearance through the customs of contractor's equipment,

47.3 **Bonus for Early Completion of Works**

The Contractor shall in case of earlier completion for either whole or part(s) of the works pursuant to sub-clauses 48.1 and 48.2(a) respectively of the General Conditions of Contract, be paid bonus up-to a limit and at a rate equivalent to 50% of the relevant limit and rate of liquidated damages prescribed in Appendix-A to Bid “Special Stipulations”.

48.2 **Taking Over of Sections or Parts**

For the purpose of Para (a) of this Sub-Clause, separate times for completion shall be provided in the Appendix-A to Bid Special Stipulations.

51.2 **Instructions for Variations**

At the end of the first sentence, after the word Engineer the words in writing are added.

52.1 **Valuation of Variations**

In the tenth line, after the works Engineer shall the following is added within a period not exceeding one eighth of the completion time subject to a minimum of 56 days from the date of disagreement whichever is later.

53.4 **Failure to Comply**

This sub Clause is deleted in its entirety.

54.3 **Customs Clearance**

(Employer may vary this sub Clause)

54.5 **Conditions of Hire of Contractor’s Equipment**

The following paragraph is added:

The contractor shall, upon request by the Engineer at any time in relation to any item of hired Contractor’s Equipment, forthwith notify the Engineer in writing the name and address of the Owner of the equipment and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements set forth above.

59.4 **Payments to Nominated Sub Contractors**

The Contractor shall pay to the nominated sub Contractor the amounts which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the contract price in accordance with clause 58 (Provisional Sums) except as stated in sub-Clause 59.5 (Certification of Payments).

Balances due from the contractor for advances in respect of contractor's equipment, materials and plant and any other sums which, at the date of termination were recoverable by the Employer from the contractor under the terms of contract. Any sums payable under this sub-Clause shall after due consultation with the Employer and the contractor, be determined by the Engineer who shall notify the contractor accordingly with a copy to the Employer.

RELEASE FROM PERFORMANCE

66.1 Payment in Event of Release from Performance

If any circumstance outside the control of both parties arises after the issue of the letter of acceptance which renders it impossible or unlawful for either party to fulfill his or their contractual obligations, or under the law governing the contract the parties are released from further performance, then the parties shall be discharged from the contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the contract and the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under clause 65 if the contract had been terminated under the provisions of clause 65.

SETTLEMENT OF DISPUTES

67.1 Engineer's Decision

If a dispute of any kind whatsoever arises between the Employer and the contractor in connection with or arising out of the contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after repudiation or other termination of the contract including any dispute as to any opinion instruction determination certificate or valuation of the Engineer the matter in dispute shall in the first place, be referred in writing to the Engineer with copy to the other party. Such reference shall state that it is made pursuant to this Clause.

Unless the contract has already been repudiated or terminated the contractor shall in every case, continue to proceed with the works with all due diligence and the contractor and the Employer shall give effect forthwith to every such decision of the engineer unless and until the same shall be revised as hereinafter provided in an amicable settlement or an arbitral award.

If either the Employer or the contractor be dissatisfied with any decision of the Engineer or if the Engineer fails to give notice of this decision on or before the eighty fourth day on which he received the reference, then either the Employer or the contractor may on or before the seventieth day after the day on which he received notice of such decision or on or before the seventieth day after the day on which the said period of 84 days expired as the case may be give notice to the other party with a copy for information to the engineer of his intention to commence arbitration as hereinafter provided as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration as hereinafter provided as to such dispute and subject to sub-clause 67.4 no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of this decision as to a matter in dispute to the Employer and the contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer the said decision shall become final and binding upon the Employer and the Contractor.

67.2 Amicable Settlement

Where notice of intention to commence arbitration as to a dispute has been given in accordance with sub-clause 67.1, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties otherwise agree, arbitration may be commenced on or after the fifty sixth day after the day on which notice of intention to commence arbitration of such dispute was given even if no attempt at amicable settlement thereof has been made.

67.3 Arbitration

Any dispute in respect of which

- (a) The decision if any of the Engineer has not become final and binding pursuant to sub clause 67.1 and
- (b) Amicable settlement has not been reached within the period stated in sub clause 67.2

Shall be finally settled unless otherwise specified in the contract under the Rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules, the said arbitrator/s shall have full power to open up review and revise any decision opinion instruction determination certificate or valuation of the Engineer related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the engineer for the purpose of obtaining his said decision pursuant to sub clause 67.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the works, provided that the obligations of the Employer the Engineer and the contractor shall not be altered by reason o the arbitration being conducted during the progress o the works.

67.4 **Failure to comply with Engineer's Decision**

Where neither the Employer nor the contractor has given notice of intention to commence arbitration of a dispute within the period stated in sub clause 67.1 and the related decision has become final and binding either party may if the other party fails to comply with such decision and without prejudice to any other rights it may have refer the failure to arbitration in accordance with sub clause 67.3. The provisions of sub Clause 67.1 and 67.2 shall not apply to any such reference.

NOTICES

68.1 **Notice to Contractor**

All certificates notices or instructions to be given to the contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post cable telex or facsimile transmission to or left at the contractor's principal place of business or such other address as the contractor shall nominate for that purpose.

68.2 **Notice to Employer and Engineer**

Any notice to be given to the Employer or to the Engineer under the terms of the contract shall be sent by post cable telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Part-II of these conditions.

68.3 **Change of Address**

Either party may change a nominated address to another address in the country where the works are being executed by prior notice to the other party with a copy to the Engineer and the Engineer may do so by prior notice to both parties.

DEFAULT OF EMPLOYER

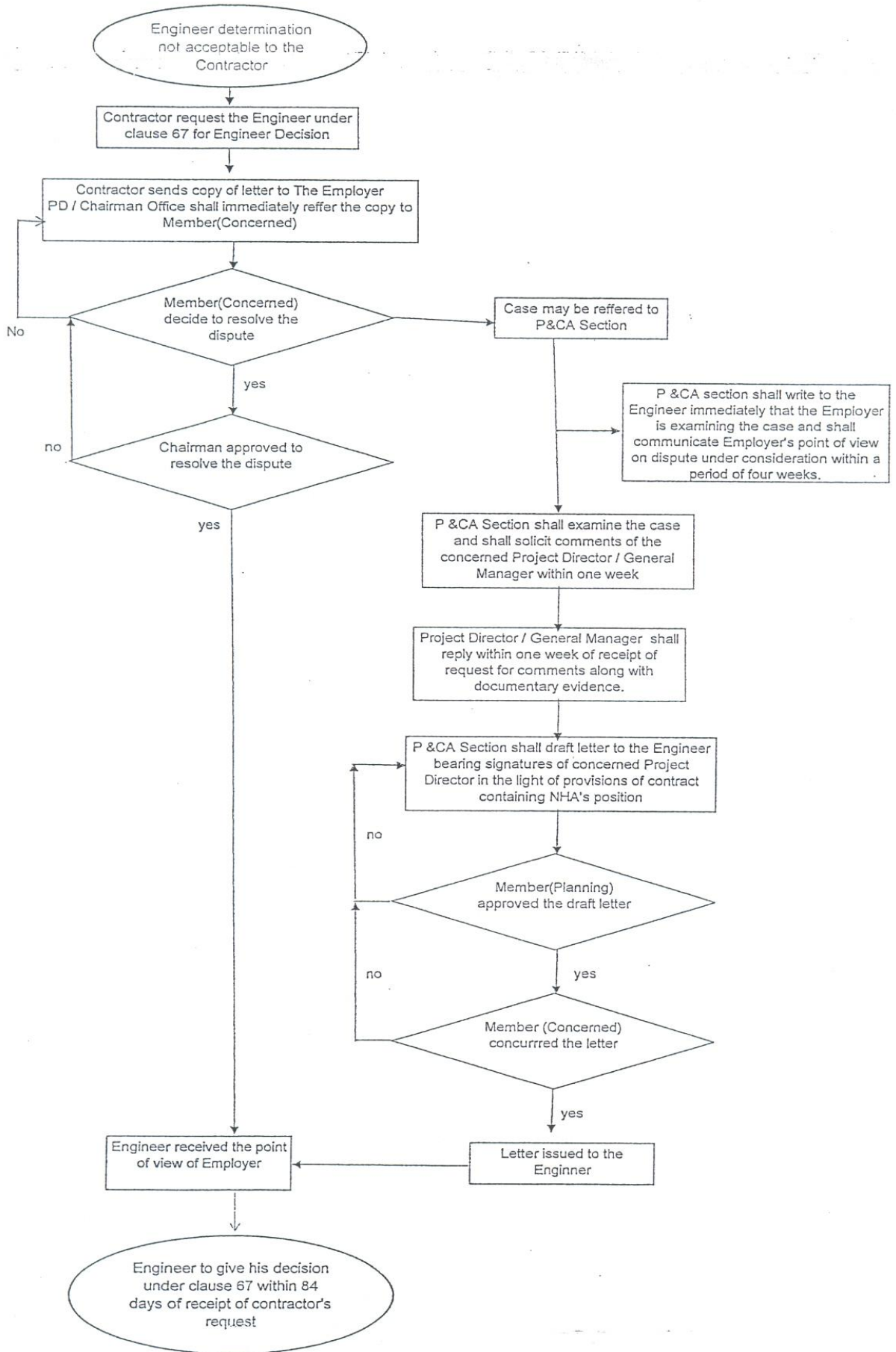
69.1 **Default of Employer**

In the event of the Employer

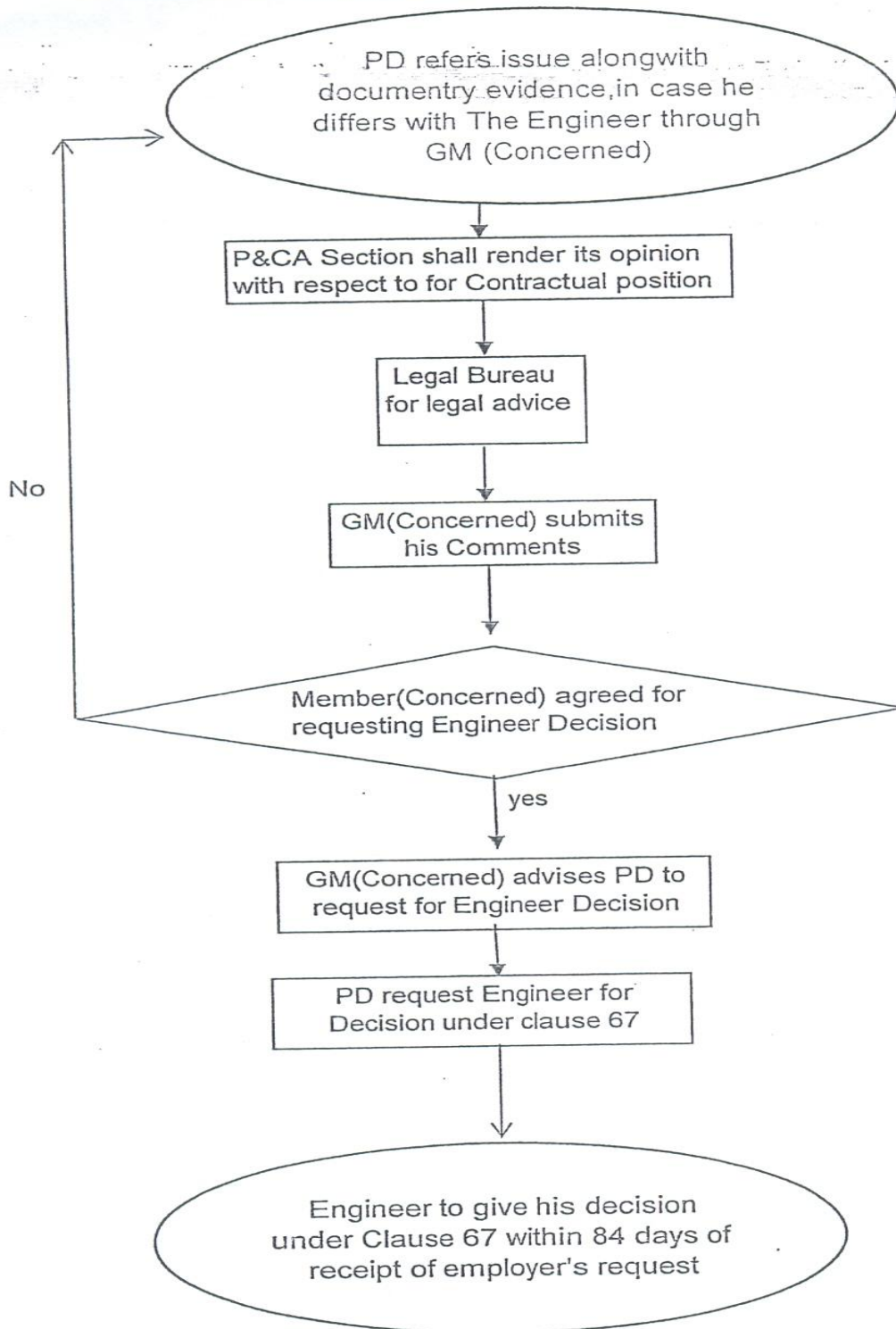
- (a) Failing to pay to the contractor the amount due under any certificate of the

FLOW CHART / DIAGRAMS

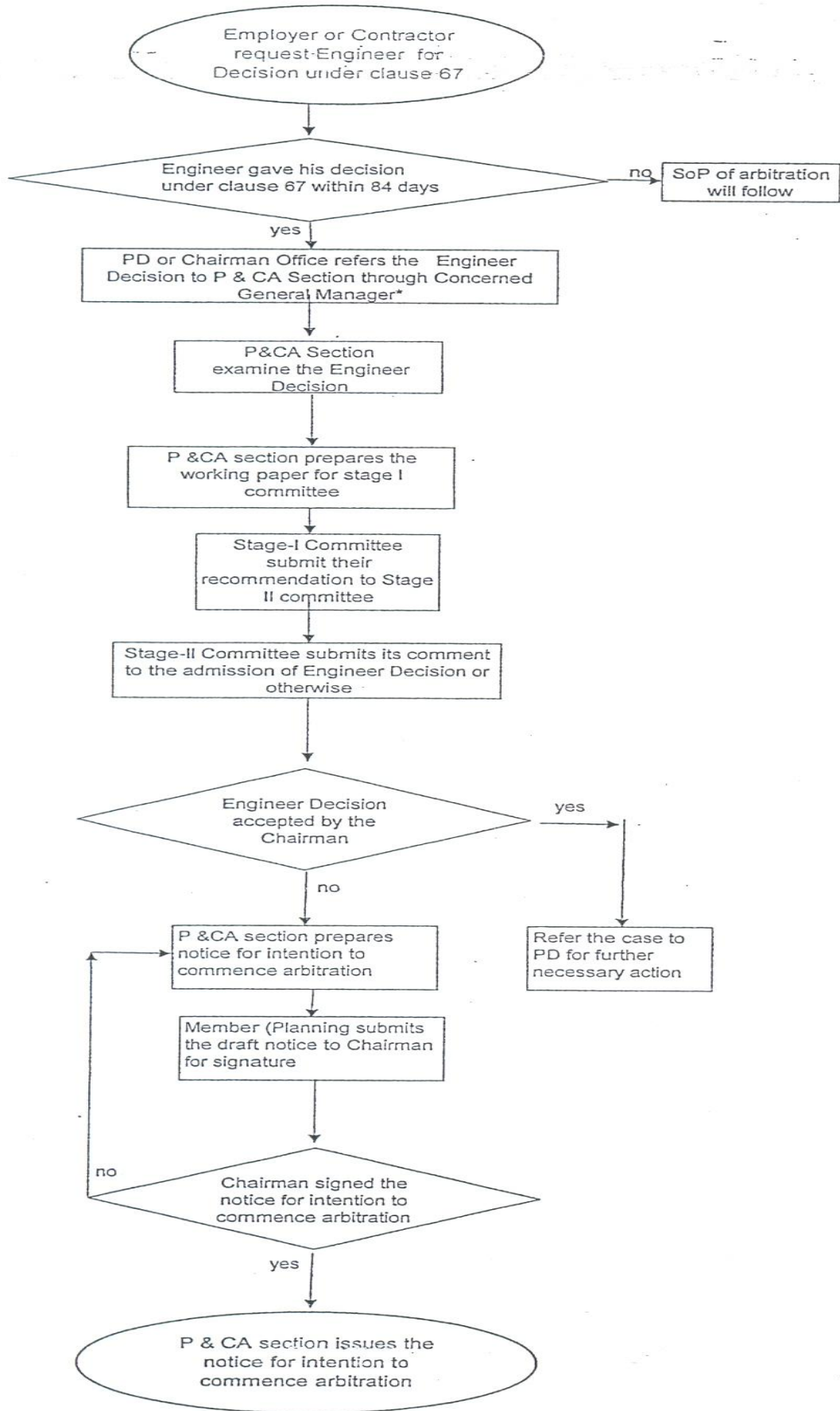
Contractor Initiates Dispute



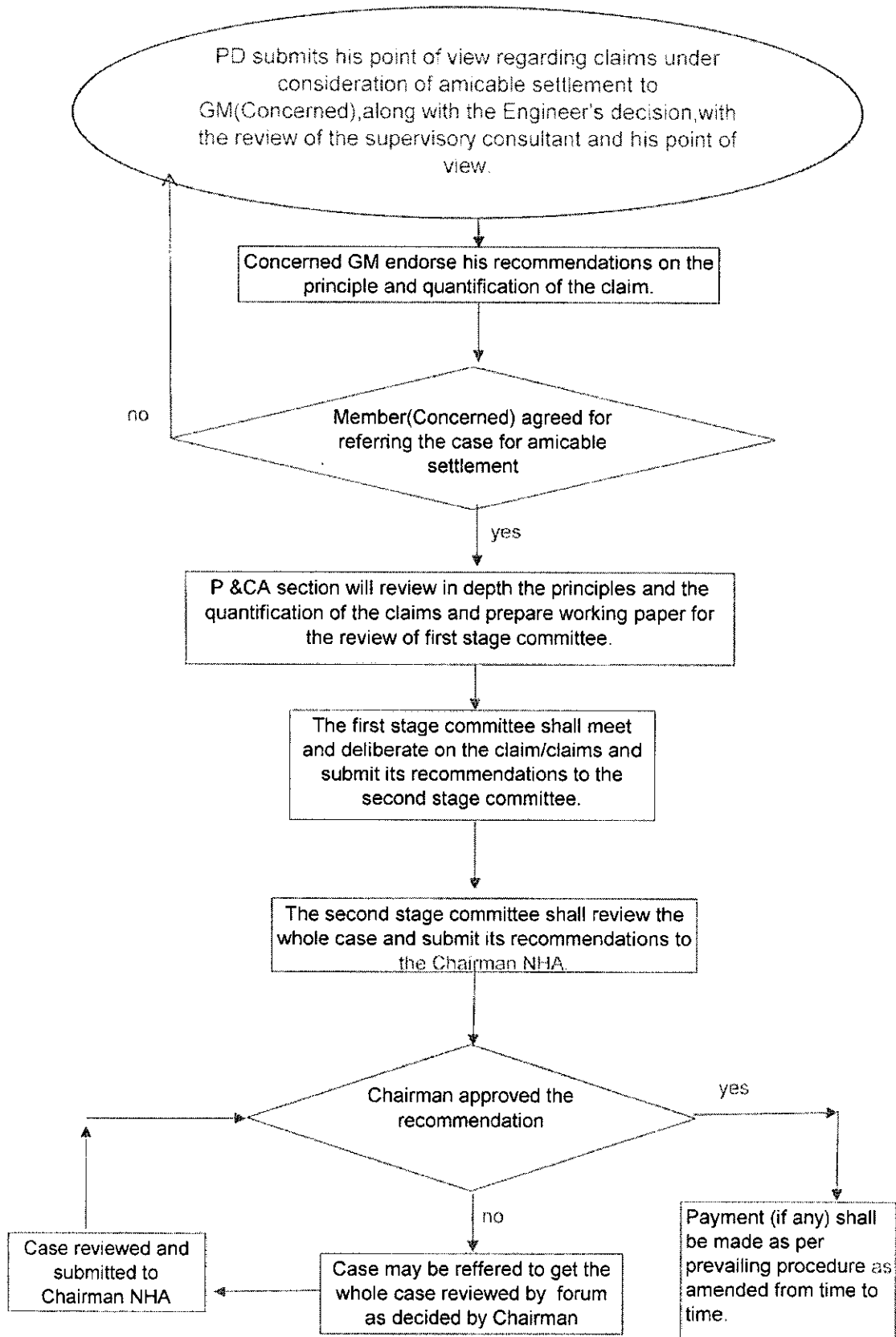
Employer Initiated Dispute



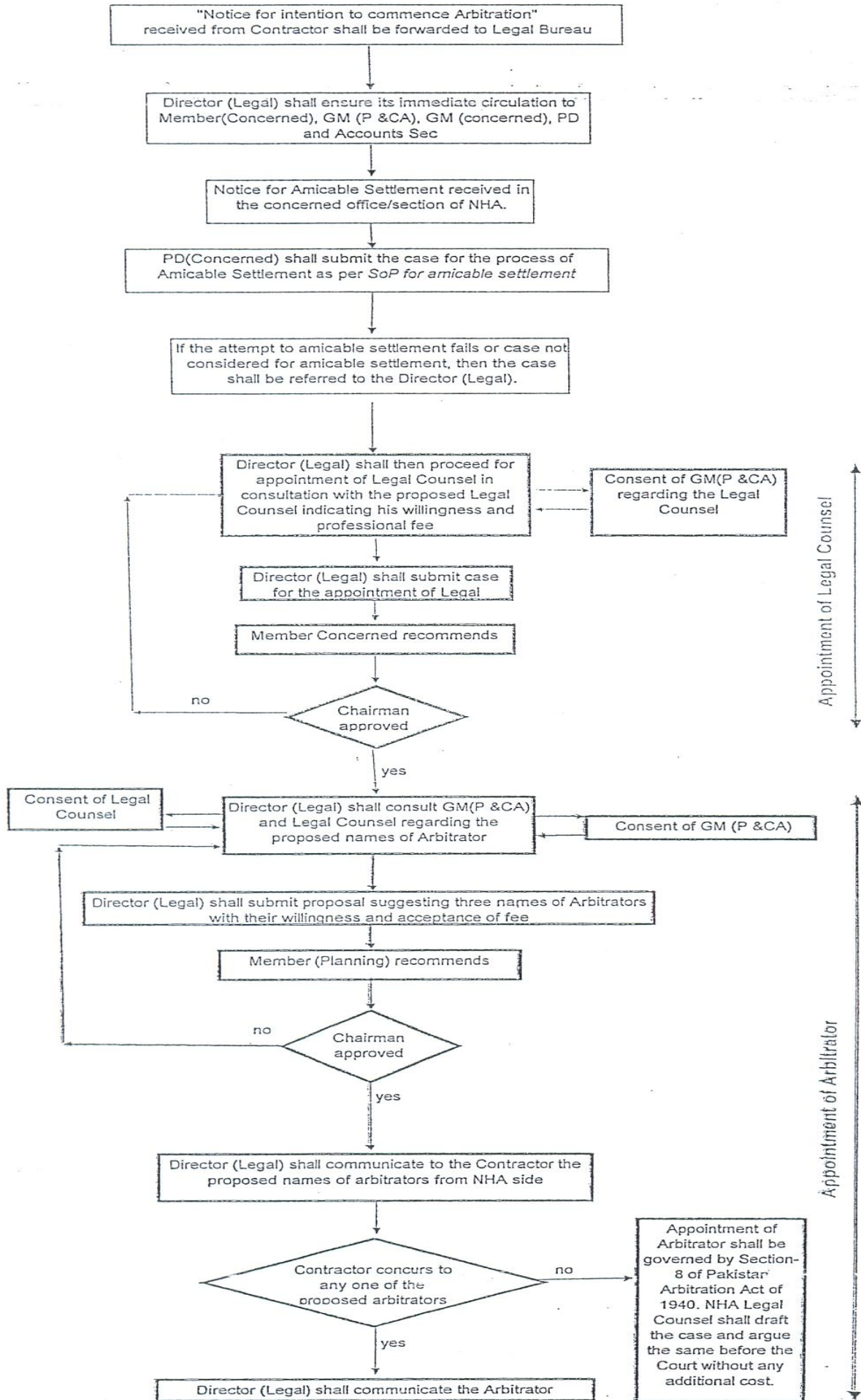
Response to Engineer Decision



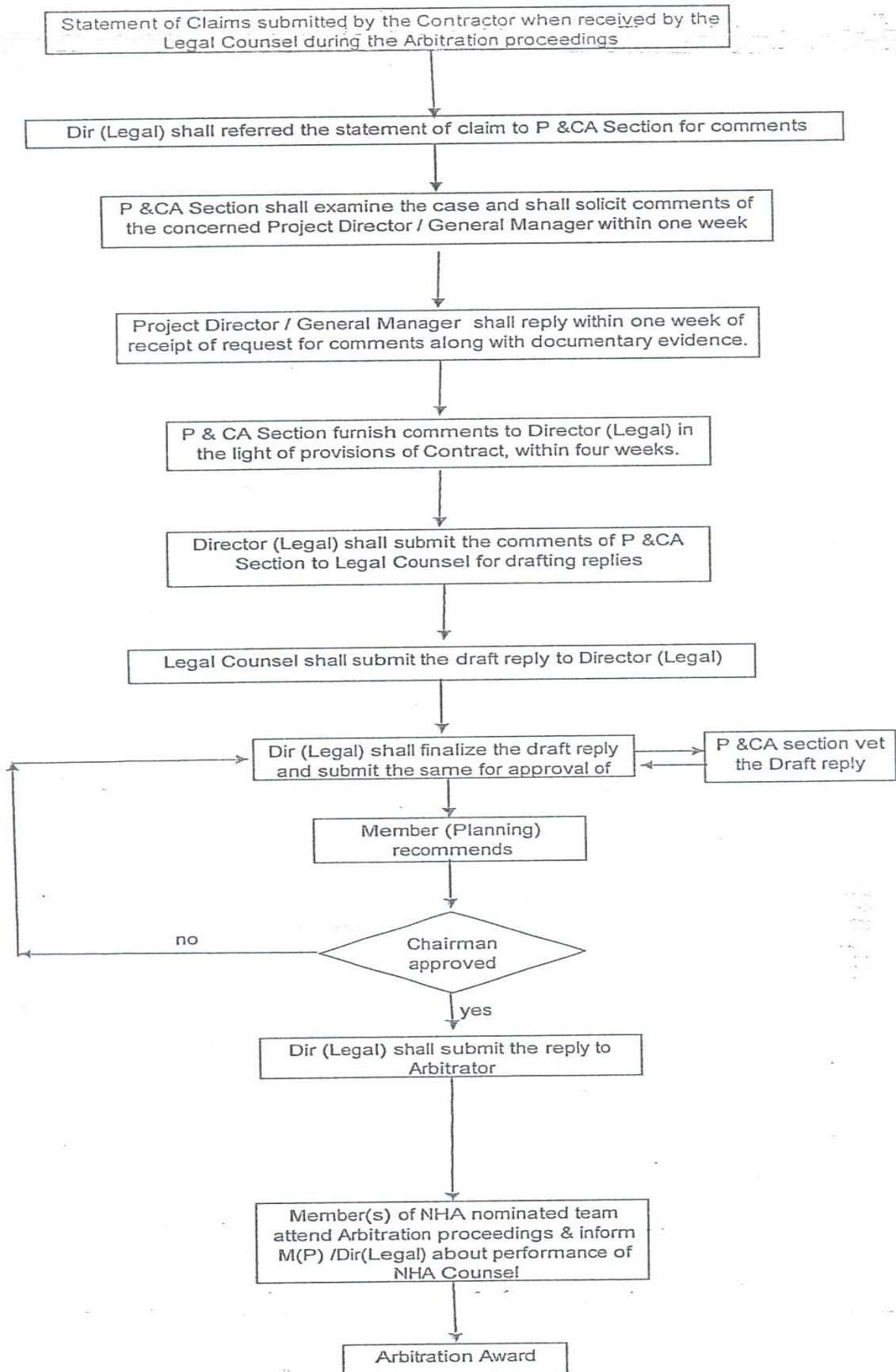
Amicable Settlement



**Arbitration Cases
Appointment of Legal Counsel and Arbitrator**

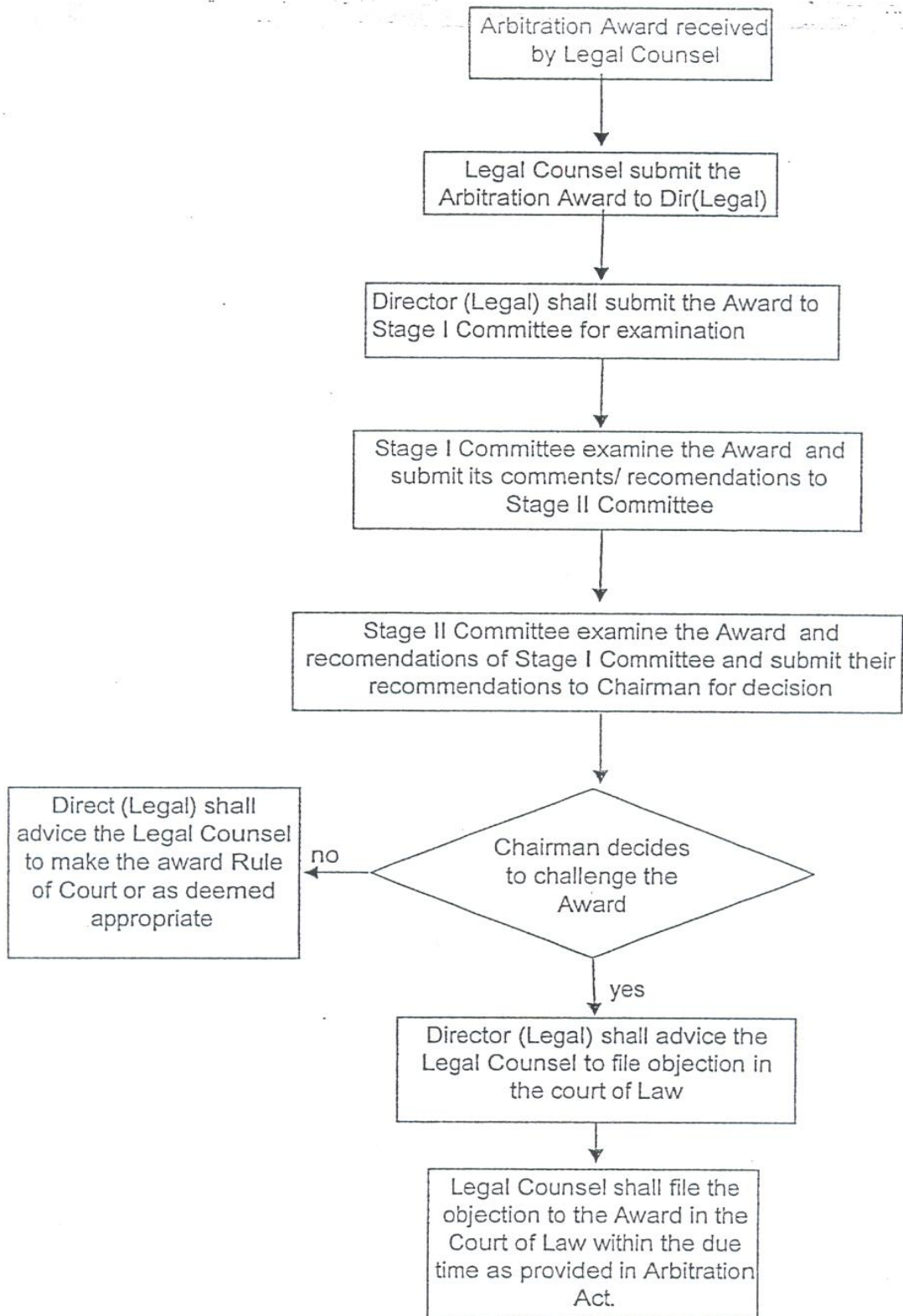


Arbitration Cases Response to Statement of Claim



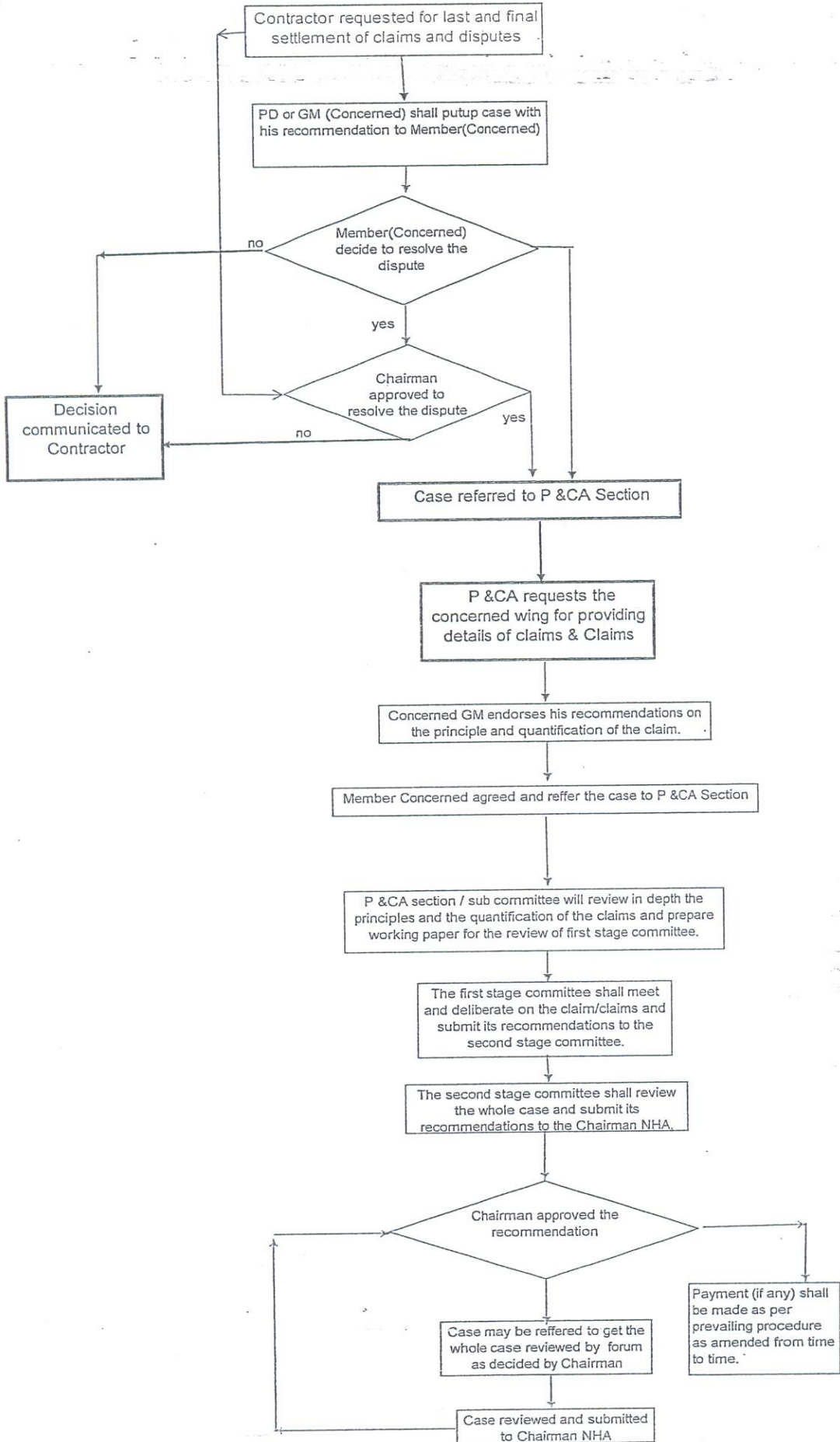
Arbitration Cases

Response to Arbitration Award



Full and Final Settlement

(Where the projects have been completed and claims are in various stages such as pre or post arbitration, courts etc,)



**TEMPLATE OF DATA SHEET
AND
BACKUP DATA FORM FOR CLAIM**

SAMPLE DATA SHEET FOR SETTLEMENT OF CLAIMS & DISPUTES

- i. Project _____
- ii. Employer _____
- iii. Contractor _____
- iv. Supervisory Consultant _____
- v. The Engineer _____
- vi. DRE _____
- vii. Arbitrator 1. _____ 2. _____ 3. Umpire _____

A. Part-I

Sr. #	Description	Amount/Value	Date		Approved by
			From	To	
1	PC-I				
2	Administrative approval				
3	Technical Sanction				
4	Contract				
5	Date of Commencement				
6	Completion Period				
7	Extension of Time (period of extension and its approving authority)				
	• 1 st				
	• 2 nd				
	•				
8	Expenditure to-date	Rs.	----	----	----
9	Variation Orders details (VO amount, percentage with reference to original contract price date and its approving authority)				
	• 1 st	Rs.			
	• 2 nd	Rs.			
	•				

10. Current status _____
- _____

B. Part-II

- **Present Case**

- **History of the claim (Background)**

(Discussion on claim being under the provisions of contract and gist of correspondence with regard to the claims by the Contractor, the Engineer and the Project Director including variation order Engineer's instruction original design detail of changes in design fixation of new rate).

- Engineer's Determination (on each claim)

(Reproduce the decision of the Engineer (if any) or his views for or against consideration).

- **DRE's Recommendations**

- **Employer's correspondence on the issues**

(Gist of the noting and letters by the Employer/NHA.Views given by various NHA personnel given at various times).

- **Arbitration**

(Brief summary of arbitration proceeds including the notice given by the party statement of dispute and reply to the issues raised etc.

C. Part-III

- **Details of Claims (documents to be attached)**

- Contractor's Claims
- Appreciation of engineer Representative
- Engineer's appraisal and quantification of the claims (irrespective of his agreeing or disagreeing of the claim)
- DRE's Recommendations
- Statement of disputes and its reply, award etc.

- View point of Project Director/concerned official from the office of General Manager (Concerned)
- General Manager (Concerned)'s recommendation on the principle and quantification of the claim(s).
- Decision of Member (Concerned) on the recommendation of General Manager (Concerned).

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BACKUP DATA FORM FOR CLAIM

Sr. #	<i>Description</i>	<i>-- To be filled by PD</i>
1.	Event given rise to the claim	
2.	Notice for intention to claim (<i>Letter no. and date</i>) (<i>Attach copy of letter</i>)	Letter no. _____ Dated: _____
3.	Is the notice given within time stipulated in contract (<i>Yes/No</i>) (<i>Attach copy of Contract Clause</i>)	
4.	Is the Engineer inspect the record as per Contract (<i>Yes/No</i>)	
5.	Is the Engineer instruct Contractor regarding record maintaining during inspection (<i>Yes/No</i>) (<i>Attach copy of relevant document</i>)	-
6.	Has the event continuing effect (<i>Yes/NO</i>)	
7.	Submission of Final Account by the contractor (<i>Mention letter no/Date</i>)	Letter no. _____ Dated: _____
8.	Time limit for submission of Final Account in the contract (<i>Enclose copy of relevant clause</i>)	
9.	Is the claim submitted within time limit mentioned in sr. # 8	
10.	Amount of Claim submitted by Contractor	
11.	Engineer's Evaluation Determination	
12.	Request for Engineer Decision under clause 67	_____ Letter no. Dated: _____

		(Attach Copy)
13.	Engineer Decision under Clause 67 (Attach copy of relevant document)	Letter no _____ Dated: _____
14.	Is the Engineer Decision within time stipulated in the Contract	
15.	Intention to commence arbitration (Attach copy of relevant document)	Letter no. _____ Dated: _____
16.	Is the letter of Intention to commence arbitration within the time stipulated in Contract (Yes/No)	
17.	Has the Arbitration commenced (Yes/No)	
18.	Arbitration award (Attach copy of relevant document)	Letter no _____ Dated: _____