

No. NH-35014/20/2020-H-(Part-II) (E-196330)
Government of India
Ministry of Road Transport and Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001.

Dated: 22nd February, 2022

Office Memorandum

Subject: Reinstatement of provision of Earnest Money Deposit (EMD) in bids for highway projects. - reg.

The undersigned is directed to say that Department of Expenditure vide O.M. No. 9/4/2020-PPD dated 12.11.2020 (copy enclosed) *inter alia* provided that

(i) Notwithstanding anything contained in Rule 171 of GFRs 2017 or any other Rule or any provision contained in the Procurement Manuals, no provisions regarding Bid security should be kept in the Bid Documents in future and only provisions for Bid Security Declaration should be kept in the Bid Documents

(ii) Wherever, there are compelling circumstances to ask for Bid security, the same should be done only with the approval of the next higher authority i.e. the authority competent to finalise the particular tender or the secretary of the Ministry/ Department, whichever is lower.


(iii) These instructions were applicable for all the tenders issued till 31.12.2021.

2. All the implementing agencies of the MoRTH were directed to strictly comply with the aforesaid DoE's instructions vide this Ministry's OM G-20016/11/202-TF-II dated 17.11.2020 (copy enclosed).

3. In this regard, it is stated that the effect of COVID pandemic in Highway sector has neutralized. In such improved scenario, it is noted that now there is trend in recent bids for submitting very low bids for important highway construction as well as consultancy contracts. Since there is no EMD Deposit, bidders are quoting abnormally low prices for the bid and after winning the bid, they start searching for sub-contractor. This tendency will have an adverse impact on quality and timely completion of important highway projects.

4. In view of the above, it has been decided with the approval of Hon'ble Minister (RT&H) to revert to the provisions of GFR, 2017 relating to bid security, which existed before issue of aforesaid DoE O.M. dated 12.11.2020.

5. All the implementing agencies of the MoRTH are requested to take necessary action accordingly.


(Sushant Sudan)

Deputy Secretary to the Govt. of India

Encl: As above

To

1. AS&FA, MoRTH
2. Chairperson, NHAI
3. MD, NHIDCL
4. ADG Zone-I, MoRTH

Copy to: Deputy Secretary (Procurement Policy Division), Department of Expenditure, Lok Nayak Bhavan, New Delhi w.r.t O.M. No. 9/4/2020-PPD dated 12.11.2020 on Bid Security/ Earnest Money Deposit.

Copy also to:

1. PS to Hon'ble Minister (RT&H)
2. Sr. PPS to Secretary (RT&H)
3. Sr. PPS to AS(H)
4. NIC, MoRTH- for uploading the above guidelines in MoRTH's website.

102655/2020/GM (CMD) Office

No. F.No.G-20016/01/2020-TF-II
 Government of India
 Ministry of Road Transport and Highways
 Transport Bhawan

New Delhi the 17th November, 2020OFFICE MEMORANDUM

Subject: Latest instructions of Ministry of Finance, Department of Expenditure regarding
 (i) Performance Security, (ii) Additional Performance Security in case of
 Abnormally Low Bids (ALBs) and (iii) Bid Security/Earnest Money Deposit -
 regarding.

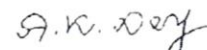
The undersigned is directed to forward herewith 3 nos. of Ministry of Finance, Department of Expenditure O.Ms. No.F.9/4/2020-PPD dated 12.11.2020 on the subjects mentioned above as per details given below:-

- i) Department of Expenditure vide OM No. F.9/4/2020-PPD dated 12.11.2020 has decided to reduce Performance Security from existing 5-10% to 3% of the value of the contract for all existing contracts. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/court proceedings have already been started or are completed. All tenders/contracts issued/concluded till 31.12.2021 should also have the provision of reduced Performance Security.

In all contracts, where Performance Security has been reduced to 3% in view of the above stipulations, the reduced percentage of Performance Security shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.12.2021

- ii) DOE vide OM No. F.9/4/2020-PPD dated 12.11.2020 has also decided that no provisions should be kept in the Bid Documents regarding Additional Security Deposit/Bank Guarantee (BG) in case of Abnormally Low Bids. It has been further mentioned that wherever, there are compelling circumstances to ask for Additional Security Deposit/Bank Guarantee (BG) in case of ALBs, the same should be taken only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry Department, whichever is lower.
- iii) Department of Expenditure vide OM No. F.9/4/2020-PPD dated 12.11.2020 further decided that notwithstanding anything contained in Rule 171 of GFRs 2017 or any other Rule or any provision contained in the Procurement Manuals, no Provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Documents. It has also been specified by DOE that these instructions will be applicable for all the tenders issued till 31.12.2021.

2. These instructions are being circulated herewith for information and strict compliance.
3. Action taken report on each of the items along with details of amount of Performance Security released for subsisting contracts may be sent on weekly basis to the undersigned.



(Anup Kumar Dey)

Under Secretary to the Government of India

Encl: As above.



Contd...

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(O.M. No. F.No.G-20016/01/2020-TF-II dt. 16.11.2010)

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DG(RD) & SS
Chairman, NHAI
MD, NHIDCL
All ADGs/All CEs
CE (Monitoring) :

With a request to send consolidated figures of Performance Security released in case of PWDs on weekly basis against amount of work awarded.

Copy to: PPS to Secretary
PPS to AS&FA
PS to DFA

Copy also to: Director, NIC - with a request to upload the OM on Ministry's Website along with enclosure of OMs of Ministry of Finance, Department of Expenditure.

S.K. Verma
17-11-2020

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102655/2020/GM (CMD) Office

No. F.9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

OFFICE MEMORANDUM

Subject: Performance Security.

As per Rule 171 of General Financial Rules (GFRs) 2017, Performance Security is to be obtained from the successful bidder awarded the contract for an amount of five to ten percent of the value of the contract to ensure due performance of the contract. Similar provisions also exist in the Manual for Procurement of Works 2019 and Manual for Procurement of Consultancy & other Services 2017 issued by this Department.

2. The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

3. In view of all above, it is decided to reduce **Performance Security from existing 5-10% to 3% of the value of the contract** for all existing contracts. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated.

4. Further, all tenders/ contracts issued/ concluded till 31.12 2021 should also have the provision of reduced Performance Security.

5. In all contracts where Performance Security has been reduced to 3% in view of above stipulations, the reduced percentage of Performance Security shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.12 2021.

Similarly, in all contracts entered into with the reduced percentage of Performance Security of 3%, there will be no subsequent increase in Performance Security even beyond 31.12.2021.

6. Wherever, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the

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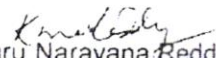
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particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded.

7. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc and are issued under Rule 6(1) of the GFRs 2017.


(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel: 24621305
Email: kn.reddy@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).

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No. F.9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

OFFICE MEMORANDUM

Subject: Additional Performance Security in case of Abnormally Low Bids (ALBs).

The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

2. In this context, it is noted that Additional Performance Security in case of Abnormally Low Bids (ALBs) is being taken from the contractors by various Ministries/ Departments though there is no provision for the same in General Financial Rules (GFRs) 2017 or the Manuals for Procurement issued by this Department.

3. As per para 7.5.7 of the Manual for Procurement of Goods 2017 issued by this Department, *an Abnormally Low Bid is one in which the bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the bidder, including detailed price analyses of its bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, Procuring Entity determines that the bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the bid/ proposal. However, it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.*

4. In view of above, it is reiterated that no provisions should be kept in the Bid Documents regarding Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids.

5. Wherever, there are compelling circumstances to ask for Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs, the same should be taken only with

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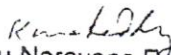
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the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower.

6. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc.


(Kotturu Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel: 24621305
Email: kn.reddy@gov.in

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All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).



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102655/2020/GM (CMD) Office

No. F.9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

OFFICE MEMORANDUM

Subject: Bid Security/ Earnest Money Deposit.

The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

2. As per Rule 170 of General Financial Rules (GFRs) 2017, Micro and Small Enterprises (MSEs) and the firms registered with concerned Ministries/ Departments are exempted from submission of Bid Security. Further, in lieu of Bid Security, Ministries/ Departments may ask bidders to sign "Bid Security Declaration" accepting that if they withdraw or modify their bids during period of validity etc., they will be suspended for the time specified in the tender documents. Similar provisions also exist in the Manuals for Procurement of Works 2019 and Manual for Procurement of Consultancy & other Services 2017.

3. In this context it is noted that Bid Security (also known as Earnest Money Deposit) is still being taken from the contractors by the various Ministries/ Departments, though the relaxations have already been provided in General Financial Rules (GFRs) 2017.

4. In view of above, it is reiterated that notwithstanding anything contained in Rule 171 of GFRs 2017 or any other Rule or any provision contained in the Procurement Manuals, **no provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Documents.**

5. Wherever, there are compelling circumstances to ask for Bid Security, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender or the Secretary of the Ministry/ Department, whichever is lower.

6. The above instructions will be applicable for all the tenders issued till 31.12.2021




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7. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc and are issued under Rule 6(1) of the GFRs 2017.


(Kotluru Narayana Reddy)
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