

No.NH 37015/01/2022-H (Comp No.208778)
Government of India
Ministry of Road Transport & Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001.

Dated: 26 August, 2022

To

1. Chairperson, NHAI, New Delhi.
2. DG(RD) & SS, MoRTH
3. Director General (BRO), New Delhi.
4. MD, NHIDCL, New Delhi.
5. All Principal Secretary(PWD)/Secretary(PWD) of all States/UTs

Sub: Seeking additional performance security for the bidders who have quoted abnormally low bid price.

Madam/Sir,

Attention is invited to the two circulars of even number issued by MoRTH on the subject matter on 18.05.2022. Vide the first circular the ministry made amendments in the RFP of EPC contract to lay down how abnormally low bid is to be identified in case of compelling circumstances and vide second circular the waiver of additional performance guarantee in case of existing contracts was extended.

2. The above two circulars are combined herewith to remove any ambiguity in the matter.

3. Ministry of Finance (Department of Expenditure), vide its Office Memorandum No. F.9/4/2020-PPD dated 12.11.2020, has issued guidelines on Additional Performance Security to be taken from the bidder in the contracts. These guidelines inter alia provide that no provision should be kept in the Bid document regarding additional performance security. However, in case of compelling circumstances where the bid quoted by the bidder is abnormally low, the additional performance security shall be taken with the approval of the next higher authority to the authority competent to finalize the particular tender, or the Secretary of the Ministry/ Department, whichever is lower.

4. In view of the trend of quoting very low bid price by the bidder, the RFP document of EPC contract was amended and it was conveyed vide this Ministry's letter dated 18.05.2022 that in accordance with the aforesaid guidelines of Ministry of Finance in order to maintain uniform approach in dealing with the situation of seeking additional performance security that in the compelling circumstances where the quote of selected bidder is lower than 20% of the estimated project cost/cost put to tender, the additional performance security shall be taken as per the following amended/modified para of standard RFP document for EPC contract. The amended /modified provision of the Standard RFP documents is as follows:

“2.21 Performance Security

Within 30 (thirty) days of receipt of Letter of Acceptance, the selected Bidder shall furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the form set forth in Appendix-VII (the “Performance Security”) for an amount equal to 3% (three percent) of its Bid Price. In case of bids mentioned below, the Selected Bidder, along with the Performance Security, shall also furnish to the Authority an irrevocable and unconditional guarantee from a

Bank in the same form given at Appendix-VII towards an Additional Performance Security (the "Additional Performance Security") for an amount calculated as under:

(i) If the Bid price offered by the selected bidder is lower than 20% of the estimated project cost/cost put to tender, the additional performance security shall be calculated @ 20% of the difference in the (i) Estimated Project Cost (as mentioned in RFP)-20% of the Estimated Project Cost and (ii) the Bid Price offered by the selected Bidder.

(ii) Maximum limit of additional performance security shall be limited to 3% of the Bid price offered by the selected bidder.

(iii) The additional performance security shall be treated as part of the performance security.

5. Additional performance security shall be taken only after approval of the Secretary, Ministry of Road Transport & Highways, mentioning specific reasons justifying the requirement of additional performance security along with track record of the bidder.

6. Further as conveyed vide this Ministry's letter dated 18th May, 2022 it is once again clarified that for existing contracts, as a special case, waiver of additional performance guarantee may be permitted by MoRTH only in those contracts, where a substantial portion of the work has already been completed by the contractors. "Substantial portion of work" for waiver of Additional Performance Security to the existing contracts would be defined as achievement of Project Milestone-II calculated in proportion to the RoW handed over to the Contractor. This provision for existing contracts will be applicable upto 31.03.2023 or until further orders, whichever is earlier.

7. All the implementing agencies of the MoRTH are requested to incorporate the amended provision in the standard RFP document of EPC while calling tenders.

8. This issues with the approval of the competent authority.

Yours faithfully



(Sushant Sudan)

Deputy Secretary to the Govt. of India

Copy for necessary action to:

- (i) All ADGs
- (ii) All Zonal CEs
- (iii) All ROs, MoRTH
- (iv) All Technical Officers of Ministry

Copy also to:

- (i) PS to Hon'ble Minister(RTH)
- (iii) APS to Hon'ble MOS (RTH)
- (ii) Sr. PPS to Secretary (RTH)
- (v) Sr. Technical Director, NIC, MoRTH for uploading on the website of the MoRTH