

No. RW/NH-11052/1/98-DO.I

Dated, the 17th June, 1998

To

The Secretaries of States/Union Territories; Director General Border Road; Director General (Works)
Central Public Works Department; Chairman, National Highways Authority of India

Subject : Bonus clause for early completion of Externally Aided Road Projects (EAPs) - Additional clause-reg.

I am directed to say that the question of giving suitable incentives to the contractors for early completion of externally aided National Highway Projects was under consideration of the Government for some time. It has now been decided that contract agreements for externally aided National Highway Projects should provide for the payment of bonus for early completion in addition to the existing provisions for liquidated damages for delay in completion of projects (Clause Nos. 47.1 and 47.2). Accordingly an additional Clause No. 47.3 "Bonus for early completion" of the existing FIDIC conditions of contract has been finalised and is given for adoption.

2. EXISTING PROVISIONS (Pertaining to liquidated damages for delays)

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| Liquidated
Damages
for Delay | 47.1. | If the contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract. |
| Reduction of
Liquidated
Damages | 47.2. | If, before the Time for Completion of the whole of the Works or, if applicable, Damages any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the, whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof. |

2.2. The rate of amount and maximum limit of liquidated damages for delay in completion of Work which are included in the Appendix to Tender as under:-

"Amount of liquidated damages for delay in completion of works	Cl.No.47.1.	Rs. _____ per day
Maximum limit of liqui- dated damages for delay in completion of works	Cl.No.47.1.	Rs. _____

2.3. The figures against the above two entries are filled keeping in mind that the amount against the first entry is equivalent to 1/20 of 1 per cent of the estimated value of whole of the Works or, if applicable, any Section rounded off to the nearest Rupees thousand and that the amount filled against the entry No.2 is 10 per cent of the contract amount.

3. ADDITIONAL CLAUSE

3.1. If the contractor achieves completion of the whole of the works prior to the time completion prescribed in Clause 43, the Employer shall pay to the contractor a sum stated in Appendix to Tender as bonus for every completed month which shall elapse between the date of completion of all items of works as stipulated in the contract, including variations ordered by the Engineer and the time prescribed in Clause 43.

For the purpose of calculating bonus payments, the time given in the Tender for completion of the whole of the Works is fixed and unless otherwise agreed, no adjustments of the time by reason of granting an extension of time pursuant to Clause 44 or any other clause of these conditions will be allowed. Any period falling short of a complete month shall be ignored for the purpose of computing the period relevant for the payment of bonus.

3.2. The rate of amount and maximum limit of bonus for early completion of work shall also be included in the Appendix to Tender as under:

"Amount of bonus for early completion of works	Cl.NO.47.3.	Rs. _____ per month (any part of the month to be excluded)
Maximum limit of Bonus for early completion of works	Cl.No.47.3.	Rs. _____

3.3. The figures against the two entries mentioned in para 3.2 above may be filled-up on the basis of the estimated value of the whole of the Works keeping in mind that the amount against the first entry should be equivalent to 1 per cent of the estimated value of whole of Works rounded off to the nearest Rupees thousand and that the amount to be filled against the entry No.2 should be six times the amount filled against the entry No.1.

4. Clause Nos. mentioned in paras 2&3 above refer to corresponding clauses of the conditions of contract for works of Civil Engineering Construction. - Part I General condition-Federation International e-des-Ingenieurs Counseils (FIDIC)-Fourth Edition reprinted 1988 with editorial amendments. These have been reproduced in *Annexure-I* for ready reference and guidance.

5. It is requested that suitable instructions may please be issued to all concerned in this regard.

6. The receipt of this letter may please be acknowledged.

Annexure-I

[Enclosure to Ministry's Circular No. RW/NH-11052/1/98-DOI dated the 17th June, 1998 (Ref. Para 4)]

Time for Completion	43.1.	The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause 48, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.
Extension of Time for Completion	44.1.	In the event of (a) the amount or nature of extra or additional work, or (b) any cause of delay referred to in these Conditions, or (c) exceptionally adverse climatic conditions, or (d) any delay, impediment or prevention by the Employer, or (e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible,

being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine, the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to
Provide Notification
and Detailed
Particulars

44.2. Provided that the Engineer is not bound to make any determination unless the Contractor has

- (a) within 28 days after such event has first arisen notified the Engineer with a copy to the Employer, and
- (b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider submission may be investigated at the time.

Interim
Determination
of Extension

44.3. Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2(b), he shall nevertheless be entitled to an extension of time provided that, he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and, on receipt of the final particulars, the Engineer shall review all the circumstances and shall determine an over all extension of time in regard to the event. In both such cases the Engineer shall make his determination after due consultation with the Employer and the Contractor and shall notify the Contractor of the determination, with a copy to the Employer. No final review shall result in a decrease of any extension of time already determined by the Engineer.

Taking-Over
Certificate

48.1. When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate/ stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instruction in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within 21 day of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.

Taking-Over of
Sections or Parts

48.2. Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of:

- (a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender, or
- (b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- (c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

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| Substantial
Completion
of Parts | 48.3. If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period. |
| Surfaces Requiring
Reinstatement | 48.4. Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state. |