

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 : 29th February, 2024

To

1. Chairman, NHAI, New Delhi
2. Incharge DG(RD), MoRTH
3. MD, NHIDCL, New Delhi
4. Director General (BRO), New Delhi

Sir,

I am directed to say that vide OM No.G20016/01/2020-TF.II dated 17th November, 2020, it had been decided that no provision for Additional Performance Security to be received in EPC contracts in case of Abnormally Low Bid should be kept in the bid documents in view of the Department of Expenditure's OM No.F.9/4/2020-PPD dated 12.11.2020. It had further been directed that Additional Performance Security in case of Abnormally Low Bid would be taken only under compelling circumstances with the approval of the authority next higher to the authority competent to finalize the particular tender, or the Secretary of the Ministry/ Department, whichever is lower.

2. Further, the Ministry, vide OM No.NH.37015/01/2022-H dated 18.5.2022, granted waiver of Additional Performance Security upto 31.3.2023 in case of the existing contracts in view of OM No.F.7/2/2022-PPD dated 19.1.2022 issued by Department of Expenditure, as a special case under prevailing adverse circumstances arising from covid pandemic. This waiver of Additional Performance Guarantee was to be permitted only in those contracts where a substantial portion of the work, defined as achievement of Project Milestone-II calculated in proportion to the RoW handed over to the Contractor, is completed.

3. The Ministry, vide OM No.37015/01/2022-H dated 18.5.2022, revised the formula for calculation of Additional Performance Security and a maximum limit of 3% of bid price offered by selected bidder was fixed. All the implementing agencies of MoRTH were directed to incorporate the amended provision regarding Additional Performance Guarantee in the standard RFP document of EPC contract.

4. Further, by another circular dated 26th August, 2022, two circulars of 18.5.2022 were consolidated and reiterated for existing contracts, permitting the waiver of Additional Performance Security in existing contracts upto 31.3.2023 on

the condition of achievement of Project Milestone-II calculated in proportion to the RoW handed over to the Contractor. All the implementing agencies of MoRTH were again requested to incorporate the amended provision of Additional Performance Security in the standard RFP document of EPC.

5. It has come to the notice of the Ministry that liquidity stress in the highways sector is still continuing and there are cases where existing projects have been delayed or stalled for the reason of liquidity crunch. As the Ministry has already capped the Additional Performance Security at 3% of the bid price offered and incorporated the same in the standard RFP document of EPC contract, extending the same benefit to existing EPC contracts will be logical and non-discriminatory and will ensure project completion in time by easing the liquidity crunch. It has, therefore, been decided that the Additional Performance Security in the existing EPC contracts in excess of 3% of the bid price will be released to the contractors provided that Milestone-II calculated in proportion to the RoW handed over to the contractor is achieved and no contractual disputes or arbitration/court proceedings exist. While releasing the Additional Performance Security beyond the limit of 3%, any outstanding recovery against the contractor will be adjusted under intimation to the contractor.

This issues with the approval of the competent authority.

(Mayur Ratilal Govekar)
Deputy Secretary to the Govt. of India

Tel. No. 011-23424515

उप सचिव / Deputy Secretary
सड़क परिवहन और राजमार्ग मंत्रालय
Ministry of Road Transport & Highways
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