

File No.P-17025/12//2017-RC (FMS-355630)

Government of India
Ministry of Rural Development
Department of Rural Development
Rural Connectivity (RC) Division

Krishi Bhavan, New Delhi
Dated 5th August, 2020

To,

i) ACS/Principal Secretaries/Secretaries Nodal Department implementing PMGSY in the States/UTs

ii) ACS/Principal Secretaries/Secretaries of Nodal Department implementing RCPLWEA in the States of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Telangana and Uttar Pradesh

**Subject: Performance Security in terms of Rule 171 of General Financial Rules, 2017/
Standard Bidding Document of PMGSY regarding.**

Sir/ Madam,

I am directed to refer to the subject cited above and to say that Department of Expenditure, Ministry of Finance has vide their Office Memorandum No. No. F/18/4/2020-PPD dated 13th May, 2020 issued instructions for premature refund of proportional performance guarantee to the contractors in order to promote liquidity in the present economic situation during the COVID-19 pandemic, subject to the following conditions:-

- i. Where an application is made by a contractor who is not in default of any contractual obligation; or
- ii. Where FMC is invoked by a contractor and the requirements of FMC are fulfilled.

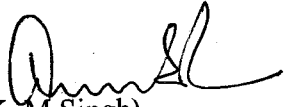
2. The said OM further states that , if the contractor/supplier is in violation of the contractual obligation, the contractee shall be under no obligation to take action as per DoE aforesaid guidelines. Further, the instant guidelines shall apply only in respect of such non-performance as can be attributable to the lockdown situation or restrictions imposed under any Act or executive order of the Government/s on account of COVID-19 global pandemic. A copy of Department of Expenditure aforesaid OM is enclosed herewith.

3. The issue arising out of the above O.M have been examined in the Ministry and it has been decided that the above changes brought out by DoE relating to premature refund of proportional performance guarantee to the contractors in order to promote liquidity in the present economic situation during the COVID-19 pandemic will also apply in the case of PMGSY related contract subject to the fulfillment of above conditions. It is made clear that these instructions do not apply to security deposit and any other deposits like additional performance security, etc.

4. The State Governments are advised to ensure the compliance of the instructions contained in the guidelines in letter and spirit, subject to their satisfaction regarding the

fulfillment of FMC conditions as per the local conditions. It should, however, be ensured that the maintenance and repair obligations of the contractor are in no way diluted during the defect liability period.

Encl: As above



(K. M Singh)

Deputy Secretary (RC)

Distribution:

1. The Chief Executive Officer/Chief Engineers of PMGSY & RCPLWEA in the States/UTs
2. All Directors in National Rural Infrastructure Development Agency (NRIDA), 15 NBCC Tower, 5th Floor, Bhikaji Cama Place, New Delhi 110001

Copy for information to:- PPS to Secretary (RD)/PPS to AS(RD)/PPS to JS (RC)

F. 18/4/2020- PPD
Government of India,
Ministry of Finance,
Department of Expenditure
Procurement Policy Division

Room No. 512, Lok Nayak Bhawan,
 New Delhi dated the 13th May, 2020

OFFICE MEMORANDUM

Subject: Performance Security in terms of Rule 171 of General Financial Rules, 2017 (GFR) – Guidelines Regarding

Rule 171 of the GFR 2017 prescribes conditions for obtaining performance security for the execution of goods and works contract. The Rule prescribes that performance security is to be obtained from the successful bidder which is awarded the contract amounting to 5% - 10% of the value of contract as specified in the bid documents. The validity of the performance security is for a period of 60 days beyond the date of completion of all contractual obligations of the supplier including warranty obligation.

2. Attention is drawn to Department of Expenditure's O.M. No. F.18/4/2020 – PPD dated 19.2.2020 wherein it was clarified that disruption of supply chains due to spread of Corona virus in China or any other country would be considered as extraordinary events or circumstances beyond human control and would be termed as a natural calamity. It was, therefore, advised that wherever considered appropriate, after following due procedure as stated in para 9.7.7 of the Manual for Procurement of Goods 2017, "Force Majeure Clause" (FMC) may be invoked.

3. Since the issue of the said O.M., restrictions have been placed on the movement of goods, services and manpower on account of the lockdown situation prevailing in the country in terms of the guidelines issued by the Ministry of Home Affairs (MHA) in terms of the Disaster Management Act 2005 (D.M. Act 2005) and executive orders of the respective States and U.T. Governments. Under such situations the payment cycle too has got disrupted due to the restrictive measures, on account of which some contractors, who have otherwise fulfilled their contractual obligations, are facing liquidity problems impacting their future performance. In some cases, it may not have been possible for a contractor/supplier to fulfil all his contractual obligations in terms of the contract. Public interest lies in quick resumption of economic activity.

4. Therefore, in the following circumstances:

- (a) where an application is made by a contractor who is not in default of any contractual obligations; or
- (b) where FMC is invoked by a contractor and the requirements of FMC are fulfilled,

the contractee (Government Department/Agency) may return the value of performance security to the contractor/supplier as is proportional to the supplies made/contract work completed to the total contract value.


5. It is clarified that if the contractor/ supplier is in violation of the contractual obligation, the contractee shall be under no obligation to take action as per these guidelines. It is further clarified that the guidelines contained in the present OM shall apply only in respect of such non-performance as can be attributable to a lockdown

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situation or restrictions imposed under any Act or executive order of the Government/s on account of COVID-19 global pandemic.

6. These guidelines are issued under Rule 6(1) of GFR 2017.


(Kotturu Narayana Reddy)
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To:
Secretaries of all Central Government Ministries/Departments