Sub: EMD and SD in Stores.

Ref: (i) Railway Board’s letter no. 98/RS(G)/709/1 dated 30/05/2006.
(ii) Railway Board’s letter no. 98/RS(G)/709/1 part. dated 08/09/2011.
(iii) Railway Board’s letter no. 2018/Trans Cell/Store Procurement dated 02.01.2019.
(iv) Railway Board’s letter no. 2004/RS(G)/779/11/Pt. dated 27.03.2019.

1. Vide letter referred at (i to v) above, inter- alia, instructions on “Earnest Money Deposit (EMD) for stores tenders” and “Security Deposit (SD)/Performance Security in stores contracts” were issued. Ministry of Finance, Dept. of Expenditure, vide OMs at reference vi to vii above, has issued instructions on the subject matter, which are applicable to procurements by Indian Railways.

2. The matter has been examined in Board and in view of above, following amendments to the above referred instructions are issued:

2.1 Earnest Money Deposit (EMD) for Stores Tenders:

   i. The policy issued vide this instruction shall apply to all tenders issued till 31/12/2021.

   ii. All bidders shall be exempted from submission of EMD in all tenders except those disqualified from such exemption vide note 2.1 iii below.

   iii. All bidders shall be required to sign the bid securing declaration as follows:

       l/ we hereby understand and accept that if l/ we withdraw or modify my/ our bids during the period of validity, or if l/ we are awarded the contract and on being called upon to submit the performance security/ Security Deposit, fail to submit the performance security/ Security Deposit before the deadline defined in the request for bid document/ Notice Inviting Tender, l/ we shall be debarred from exemption of submitting Bid Security/ Earnest Money Deposit and performance security/ Security Deposit for a period of 6 (six) months, from the date l/ we are declared disqualified from exemption from submission of EMD/SD, for all tenders for procurement of goods issued by any unit of Indian Railways published during this period.

   iv. Wherever, there are compelling circumstances to ask for Earnest Money Deposit/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 concerned Board Member, whichever is lower. In such cases EMD shall be applicable as per the existing policy.

2.2 Security Deposit (SD)/Performance Security for Stores Contracts:

   i. It is decided for all existing contracts, in case the performance security is more than 3% of the value of the contract, to reduce Performance Security to 3% of the value of the contract.
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.

ii. Further, all tenders/contracts issued/declined till 31/12/2021 shall have performance security as per existing instructions or 3% whichever is lower.

iii. 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 shall 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.

iv. 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 particular tender, or the concerned Board Member, whichever is lower. Specific reasons justifying the exception shall be recorded. In such cases performance security shall be applicable as per the existing policy.

3. Other instructions on the matter shall continue to apply. Tender conditions to be suitably altered by the procuring agencies.

4. CRIS shall make necessary changes in the applications.

This is issued with the concurrence of Finance Directorate of Railway Board.

No. 2020/RS(G)/779/16

1. PFAs, All Indian Railways & Production Units
2. The ADAI(Railways), New Delhi
3. The Directors of Audit, All Indian Railways
4.

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Sr. Prof. (Material Management), NAIR, Vadodara, Executive Director (Stores), RDSO, Lucknow
Chief Commissioner, Railway Safety, Lucknow
Zonal Railway Training Institute, Sukadia Circle, Udaipur

Copy to:
The Genl. Secy., AIRF, Room No. 248, & NFIR Room No. 256-C, Rail Bhavan
The Secy. Genl., IRPOF, Room No. 268, FROA, Room No. 256-D &AIRPOA, Room No. 256-D Rail Bhavan.

Copy to:- PSO/Sr. PPS / PPS / PS/APS to:
MR, MoS(R)
CRB & CEO, M(T&RS), M(Infra.), M(OBD), M(F), SECY., DG (RHS), DG (RPF), DG(HR),
All AMs, PEDs & Executive Directors of Railway Board.
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.
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).
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
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
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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).
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
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.

(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).