

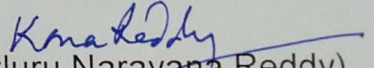
No.F.18/15/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi.
Dated the 25th June, 2020.

OFFICE MEMORANDUM

Subject: Clarification on the applicability of OMs dated 13.05.2020.

Attention is invited to the two OMs No.F.18/4/2020-PPD dated 13.05.2020 regarding Performance Security in terms of Rule 171 of GFRs 2017 and Force Majeure Clause issued by this Department in the time of COVID-19 pandemic (copies attached). A Doubt has arisen as to whether the Central Public Sector Undertakings (CPSUs) are covered under the term "Government Agencies" referred in these OMs. In this regard it is hereby clarified that these two OMs are applicable not only to all Central Ministries/ Departments, their attached and subordinate offices, Autonomous Bodies covered by GFR, 2017 but also to Central Public Sector Undertakings (CPSUs) subject to issue of any separate orders by Department of Public Enterprises in this regard.


(Kotluru Narayana Reddy)
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To

All Secretaries of Central Ministries/ Departments

Copy to : Secretary, Department of Public Enterprises with a request to reiterate the instructions in the OMs cited for compliance of CPSUs, as these were part of the Government's 'Atmanirbhar Bharat' package.

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.



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To:

Secretaries of all Central Government Ministries/Departments

**No. F. 18/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division**

**North Block, New Delhi
New Delhi dated the 13th May, 2020**

OFFICE MEMORANDUM

Subject: Force Majeure Clause (FMC)

Attention is invited to Department of Expenditure's O.M. No. 18/4/2020-PPD dated 19th February, 2020 on the invocation of Force Majeure Clause (FMC). Vide the O.M., it was clarified that disruption of supply chains due to spread of Coronavirus will be covered under FMC which could be invoked, wherever considered appropriate, following the due procedure as stated in para 9.7.7. of the Manual on Procurement of Goods.

2. Subsequent to issuance of the above referred O.M., further disruptions have affected transportation, manufacturing and distribution of goods and services in the country. Limitations placed on the movement of men and material as per the guidelines issued by the Ministry of Home Affairs (MHA) under the Disaster Management Act, 2005 (DM Act 2005) and the respective State and UT governments from time to time have severely impaired the fulfilment of contractual obligations for supply of goods, works and consultancy services (including other services), and affected the volume of vehicular traffic.


3. Attention in this regard is invited to para 9.7.7 of the "Manual for Procurement of Goods 2017", Para 6.4.2 of the "Manual for Procurement of Works 2019" and para 8.14.1 of the "Manual for Procurement of Consultancy and other Services 2017" issued by the Department of Expenditure. The above referred three Manuals recognize extraordinary events or circumstances beyond human control leading to delays in or non-fulfilment of contractual obligations. In a situation of such events happening, and after following due procedure, parties to the contract are allowed flexibility to invoke FMC following prescribed due procedure.

4. It is recognised that in view of the restrictions placed on the movement of goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Governments, it may not be possible for the parties to the contract to fulfil contractual obligations. In respect of Public-private Partnership (PPP) concession contracts, a period of the contract may have become unremunerative. Therefore, after fulfilling due procedure and wherever applicable, parties to the contract may invoke FMC for all construction/works contracts, goods and services contracts and PPP contracts with Government Agencies and in such event, date for completion of contractual obligations which had to be completed on or after 20th February 2020 shall stand extended for a period not less than

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three months and not more than six months without imposition of any cost or penalty on the contractor/concessionaire. Concession period in PPP contracts ending on or after 20th February 2020 shall be extended by not less than three and not more than six months. The period of extension (between three and six months) may be decided based on the specific circumstances of the case and the period for which performance was affected by the *force majeure* events.

5. It is clarified that invocation of FMC would be held valid only in a situation where the parties to the contract were not in default of the contractual obligations as on 19th February, 2020. It is further clarified that invocation of FMC does not absolve all non-performances of a party to the contract, but only in respect of such non-performance as is attributable to a lockdown situation or restrictions imposed under any Act or executive order of the Government/s on account of COVID-19 global pandemic. It may be noted that, subject to above stated, all contractual obligations shall revive on completion of the period.


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To,
Secretaries of all Central Government Ministries/Departments