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No. IA/I/20/Circular/Vol-VI I

Dated: 30 /01/2020

IMPORTANT CIRCULAR No. 21

To

- 1) All the LAOs
- 2) All AO GE /AGE
(As per standard list)

Subject:- AUDIT ON PERFORMANCE SECURITY REGISTER

A copy of E-in-C Branch, MES, IHQ of MOD (Army) New Delhi letter No 66546/Manual/11/E8 dated 01/01/2020 regarding Performance Security is enclosed herewith for information/guidance of all concerned.

As per Para 8 -5 (C) of the above letter, "Performance Security Register shall also be maintained by the Contract Section with details of Performance Securities and date of validity of these instruments and the same shall be an auditable document", which will be maintained in GE/ AGE, CWE, CE and CCE accepting contracts in MES.

In the light of the above reference all the LAOs, AO GE/AGEs/CCEs are requested to include the name of "Performance Security Register" in the list of auditable documents. It is also requested to confirm that the register is audited from the date of opening of the register in respect of all concerned GE/AGE, CWE, CE and CCE Offices.

Enclosure: As above

-sd-
(N. K. BISWAS)
Deputy controller

Copy to:
The O I/C ... With a request to upload in the CDA Guwahati website.
EDP Section
(Local)

Enclosure: As above

(N. K. BISWAS)
Deputy controller

66546/Manual/ 11 /E8

01 Jan 2020

All MES Formations
(On MES Website)

PERFORMANCE SECURITY : CLARIFICATIONS THEREON

1 Ref this HQ letter No. 66546/Manual/924/E8 dated 18 Feb 2019.

2 Above letter includes instructions on Performance Security (PS) provisions for contracts having GCC of IAFW-2249 & IAFW-1815Z and provisions for increased Defects Liability Period (DLP) for such works. Subsequently representations were received from MES BAI for review of certain instructions. Certain group of MES BAI have also moved the Courts of Law for relief. Though Courts have not provided any relief to the builders, Hon'ble High Court Delhi in Para 8 of its order dated 08 Jul 2019 in disposal of case No WP (C) 7269/2019 and CM Nos 30257-30258/2019 has pronounced as under :-

"Para 8. The contention that the increase in the defect liability period would be meaningless in certain contracts, is a matter that is required to be considered by MES. It is possible that in a particular contract, some clauses of the GCC may be inapplicable. The same are required to be examined in the context of the specific contract. It is expected that MES will include the GCC in a meaningful manner."

3 A Working Group (WG) was constituted including members of MES BAI to examine their grievances and submit recommendations. The WG has submitted its recommendation on which the members from MES BAI submitted dissent note containing some proposals.

4 The recommendations of WG alongwith the dissent note by member of MES BAI have been examined. Other aspects have also been examined ie suitability of enhanced DLP in respect of certain contracts, period of redoing for certain types of works stipulated in RMEs etc. Certain relaxation in provisions related to release of Performance Security is being examined and case is being taken up with MoD. Also, considering the factors associated with types of work and necessity of period to cover defects liability, separate defect liability periods for different type of works are being examined and case is being taken up with MoD for necessary approval.

5 In addition, the WG has suggested reconciliation of discrepancies in provisions related to Performance Security as existing in a special condition and that in General Conditions of Contract. Accordingly following instructions are issued:-

(a) Ref Para 18.6A.2 of Appendix 'C' to this HQ letter no 66546/ Manual /924 / E8 dated 18 Feb 2019.

The existing Para 18.6A.2 is hereby deleted and replaced by the revised Para 18.6A.2 as under:-



"The Performance Security shall be in favour of Accepting Officer and shall be in any of the forms mentioned above Work Order No 1 shall be placed only after submission of Performance Security of adequate value by the contractor. In case a fixed deposit receipt of any Bank is furnished by the contractor to the Government as part of the Performance Guarantee and the Bank is unable to make payment against the said fixed deposit receipt, the loss caused thereby shall fall on the contractor and the contractor shall forthwith on demand furnish additional security to the Government to make good the deficit."

(b) Ref Para 18.6A.5 of Appendix 'C' to this HQ letter no 66546/ Manual /924 / E8 dated 18 Feb 2019.

The existing Para 18.6A.5 is hereby deleted and replaced by the revised Para 18.6A.5 as under:-

"The period of validity of the Bank Guarantee Bond against Performance Security shall be initially valid upto the stipulated date of expiry of Defects Liability Period plus minimum 60 days beyond that. In case final bill is not paid during this period, the contractor shall get the validity of Performance Guarantee extended to cover such enlarged time required for payment of final bill."

(c) Ref Para 18.6A.7 of Appendix 'C' to this HQ letter no 66546/ Manual /924/ E8 dated 18 Feb 2019. Following content shall be added at the end of the Para :

"The register shall also be maintained by the Contract Section with details of Performance Securities and dates of validity of these instruments and the same shall be an auditable document. Performance Security shall be in possession of the official who is head of the Contract Section of the Office of concerned Accepting Officer."

(d) Ref Para 18.6A.8 of Appendix 'C' to this HQ letter no 66546/ Manual /924/ E8 dated 18 Feb 2019. Following content shall be added at the end of the Para :

"Accepting Officer shall ensure to issue notice to the concerned contractor to get the validity of Performance Security instrument extended suitably two months before the expiry of the validity. In case extension is not received four weeks before the expiry of validity of financial instrument, necessary encashment notice shall be served by Accepting Officer."

(e) Ref Para 18.6A.10 of Appendix 'C' to this HQ letter no 66546/ Manual /924/ E8 dated 18 Feb 2019:-

The existing Para 18.6A.10 is hereby deleted and replaced by the revised Para 18.6A.10 as under:-

"Bank Guarantee Bond in lieu of Performance Security is due for discharge on expiry of Defect Liability period provided always that the contractor has been paid the final bill and contractor has rendered the No Demand Certificate (IAFW-451). Immediately after expiry of Defects Liability period, GE concerned shall check and ascertain the position of final bill.

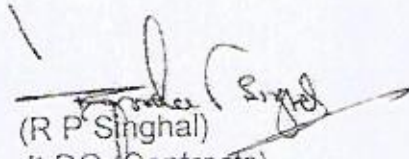


In case final bill has been paid, contractor shall be asked to submit the No Demand Certificate (IAFW-451), if not already submitted by him. After submission of No Demand Certificate (IAFW-451), GE will intimate this fact to the Accepting Officer within a week who shall release the Bond duly discharged to the contractor. Accepting Officer will ensure that no delay occurs in releasing the Bank Guarantee Bond.

In case final bill has not been paid, the status thereof shall be ascertained by Accepting Officer and efforts will be made to get it cleared within one month of expiry of Defects Liability period. After clearance and payment of final bill contractor shall be asked to submit the No Demand Certificate (IAFW-451), if not already submitted by him. After submission of No Demand Certificate (IAFW-451) to GE and on receipt of the same, Accepting Officer shall release the Bond duly discharged to the contractor without any delay.

If any recovery is outstanding against the contractor, release of Bank Guarantee will be subject to compliance of the procedure for effecting the recovery/withholding the due amount as stipulated in Condition 67 (as amended) of GCC (IAFW-2249) or Condition 34 (as amended) of GCC (IAFW-1815Z), as applicable."

6. The above amendments shall be termed as Amendment No. 53 of the MES Manual on Contracts 2007 (Reprint 2012). These shall be operative with immediate effect.


(R P Singhal)
Jt DG (Contracts)
for E-in-C

Copy to:-

PC-66546/P-1/E8/Mod/MES/E-in-C's/Dte of CM