



MES BUILDERS ASSOCIATION OF INDIA (REGD.)

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2019-2021

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Ref.No.MBAI/E-in-C/ 07 /2019

Dated : 17.07.2019

The Engineer-in-Chief
Kashmir House, Rajaji Marg,
DHQ PO
New Delhi-110011

**Sub:- Inclusion of Performance Security, Deletion of Risk & Cost Provision
and increase in Defects Liability Period.**

Respected Sir,

Further to our letter No. MESBAI/E-in-C/02/2019 dated 08.07.2019 and discussion held with the Working Group. Subsequent to the aforesaid we have done a deeper study on the subject and therefore, wish to make the following submission:

1. Provision of Amendment No.45 regarding condition No.68 (Refund of Security deposit including all sub paras) of IAFW-2249 and Appendix 'C' clause 18.6A.10 are contradictory to each other in respect to linking the Performance Security with payment of Final Bill.
2. It is incorrect to link Performance Security with payment of Final Bill as Performance Security is meant to ensure diligent performance of work as per contract. Settlement of accounts (unless Govt has an undisputed demand for recovery pending against the contractor) cannot be considered part of performance of work.
3. Taking Performance Security @5% over and above SSD is on much higher side as compared with Industry standards.
4. Every contractor who has got himself enlisted with MES has executed a Standing Security bond. The Standing Security bond is valid for the entire period till the contractor remains enlisted. Though S.S. Bond may be renewed due to administrative reasons i.e. submission of fresh FDR in lieu

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of the existing FDR, Revision of Monetary limit of each class of contractor, etc.

5. Renewal of enlistment of contractors at every 5 years cyclic period is an exercise to re-verify the financial antecedents but it does not impact the status of S.S. Bond.
6. S.S. Bond is a legal document and therefore, becomes legally binding on the one seeking it and the one giving it. Hence by a mere stroke of the pen it cannot be altered for any reason whatsoever without the mutual consent of both the parties.
7. Exemption from payment of EMD for enlisted contractor is an additional facility given relying on the fact that antecedents of the contractor have been carefully verified while granting enlistment to a contractor. Therefore, Govt. is deemed to be amply safe even though EMD is not taken by the virtue of other provisions through which recovery can be made in case of any default.
8. When we read the stipulations contained in S.S. Bond, executed by each and every contractor along with Standing Security deposit, they are meant to serve the same purpose that Performance Security is meant to serve. Therefore, this SSD should be factored in when specifying rate of performance security for successful completion of work.
9. Keeping in view that SSD always remain deposited with Govt. (which has kept Govt. Secured in the past) the Performance Security being additionally demanded should be released immediately on completion of work and SSD should be considered sufficient to secure DLP. Here we wish to highlight that 1% remaining Retention money is retained till rectification of all defects, noticed at the time of completion of work and Final Bill is paid only after rectification of defects.
10. Retaining Performance Guarantee till completion of DLP is uncalled for and unprecedented. In all the leading Departments and PSUs the rate of

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Performance Security is 5% only and is released immediately after completion of work. Please also note that in all the Departments as mentioned below the Defect liability period is only one year which is working well in the Departments and PSUs. Please find enclosed GCC of various Departments and PSUs as following:

- CPWD
- Indian Railway
- Airport Authority of India
- WAPCOS
- RITES
- NBCC (India) Ltd.

You can very well see that in all the Departments Performance Security is released on completion of work. We request that it should be the same in MES as in other Departments.

This letter should be given precedence over our previous letters wherever contradictory requests have been made in the past due to ignorance of facts.

You are requested to kindly consider our submission made now as well as in the past sympathetically and arrive at a mutual acceptable rules for Performance Security policy.

Thanking you,

Yours faithfully,

(ANIL KAPOOR)
PRESIDENT

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