

**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Finance Department – COVID-19 pandemic – Relaxation of certain contractual obligations – Orders -Issued.

FINANCE (HR-V-TFR-A&L-EWF) DEPARTMENT

G.O.RT.No. 2451

Dated: 07-10-2020

Read the following:

1. O.M.No.F.18/4/2020-PPD, dated 19-2-2020 of Department of Expenditure, Procurement Policy Division Office, Ministry of Finance, Government of India on Force Majeure Clause (FMC)
2. O.M.No.F.18/4/2020-PPD,dated 13-5-2020 of Department of Expenditure, Procurement Policy Division Office, Ministry of Finance, Government of India on Force Majeure Clause(FMC).
3. O.M.No.F.18/4/2020-PPD,dated 13-5-2020 of Department of Expenditure, Procurement Policy Division Office, Ministry of Finance Government of Performance Security in terms of Rule 171 of GFR,2017.
4. Order No. COVID-19/RoadMap/JS(H)/2020, dated:3-6-2020 of MoRTH, GOI.
5. Representation from the Builders' Association of India, Andhra Pradesh, dt.22.05.2020.

ORDER:

In the reference 1st read above, the Department of Expenditure, Procurement Policy Division Office, Ministry of Finance, Government of India, has clarified that disruption of supply chains due to the 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 and it was clarified that whenever considered appropriate, after following due procedure as stated in Para 9.7.7 of the Manual of Procurement of Goods 2017, "Force Majeure Clause" (FMC) may be invoked.

2. In the reference 2nd read above, the Department of Expenditure, Procurement Policy Division Office, Ministry of Finance, Government of India duly recognizing that in view of the restrictions placed on the movement of goods, services & manpower on account of the lock-down situation overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 by the States and the Union Governments, it may not be possible for the parties to the contract to fulfill contractual obligations. Therefore, after fulfilling due procedure & wherever applicable, parties to the contract may invoke FMC 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 (3) months and not more than (6) months without imposition of any cost or penalty on the contractor/concessionaire only in a situation where the parties to the contract were not in default of the contractual obligations as on 19th February 2020 and that the invocation of the FMC does not absolve all non-performance 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 on account of the COVID-19 global epidemic.

3. In the reference 3rd read above, the Department of Expenditure, Procurement Policy Division Office, Ministry of Finance, Government of India duly recognizing that in view of the restrictions placed on the movement of goods, services & manpower on account of the lockdown situation overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 by the States and the Union Governments, 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, therefore where an application is made by a contractor who is

not in default of any contractual obligations or FMC is invoked by the contractor and the requirement of the FMC fulfilled the contractee Government Department 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. It was also clarified that if the contractor is in violation of the contractual obligation, the contractee shall be under no obligation to take action as per these guidelines and that these guidelines shall be applicable 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 on account of the COVID-19 global epidemic.

4. In the reference 4th read above, Ministry of Road, Transport & Highways has issued orders granting certain reliefs to contractors, concessionaries and developers of road sector due to the COVID-19 epidemic.

5. In the reference 5th read above, the Builders' Association of India, Andhra Pradesh have represented to the Government describing their financial difficulties during the lock-down and sought certain reliefs to improve liquidity.

6. After careful consideration of the references read above, the reliefs granted by some State Governments & the Government of India in view of the outbreak of the COVID-19 epidemic, and in the context of the payment system followed by the Government of Andhra Pradesh, the following measures are ordered for providing immediate relief to the Agencies/Contractors.

A. EXTENSION OF TIME (EOT)

- a. Extension of Time (EOT) for the loss of execution period, due to COVID- 19 pandemic, can be granted for all works, entrusted prior to 19.02.2020 for a period of not exceeding six months (w.e.f., 19.02.2020) upon request of the Agencies/Contractors.
- b. The agencies who are in default of any contractual obligations as on 19.02.2020, are not entitled for the above relief.
- c. The EOT, so granted vide sub para "a" above shall not entail any additional benefits than that provided in the contract.

B. BANK GUARANTEES(BG)/FURTHER SECURITY DEPOSITS(FSD)

- a. The withheld amounts recovered from the Running Account (RA) bills towards BG/FSDs can be released to the Agencies, who are not in default of any contractual obligations as on 19.02.2020, after ensuring that an amount equal to 2.5% of the Contract Value shall be retained as FSD / BG till the completion of the DLP (Defect Liability Period). This is in addition to the EMD (Earnest Money Deposit) collected at the rate of 2.5% of the contract value at the time of entering into the agreement.
- b. In respect of the on-hand RA Bills, the withheld amounts towards FSD @ 7.5% shall be calculated and the amount to be retained, as detailed at sub para 'a' above shall be deducted and balance amount shall be released.
- c. The agencies who are in default of any contractual obligations as on 19.02.2020, are not entitled for the above relief
- d. In respect of 'Nil' balance or adverse balance, the FSD shall be withheld @7.5% as per procedure.

7. The measures indicated at para (6) above shall be implemented by the contract executing authorities (i.e. concerned CEs/SEs/EEs) with immediate effect and shall be in force up to 31.03.2021. It is further clarified that if the contractor is in violation of any contractual obligation, the contractee shall be under no obligation to take action as per these guidelines detailed at para (6) above and the said guidelines shall be applicable only in respect of such non-performance as is attributable to a lock-down situation or restrictions imposed under any act or executive orders of the Government on account of Covid-19 global epidemic.

8. The treatment of E.M.Ds shall remain unchanged.
9. The usual procedure of the deduction of FSD/withheld shall be restored from 01-04- 2021 onwards for the bills recorded on or after 1-4-2021.
10. These orders shall be applicable to all the Departments, Public Sector Undertakings, Societies, Universities, Local Bodies and all other Institutions of the Government of Andhra Pradesh.
11. A copy of this order is available in www.ap.gov.in/goir

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**SHAMSHER SINGH RAWAT
PRINCIPAL SECRETARY TO GOVERNMENT**

To
All the Departments of Secretariat.
All the Heads of the Departments.
The Director of Works Accounts, Ibrahimpatnam, Vijayawada.
The Chief Executive Officer, APCFSS, Ibrahimpatnam
Copy to:
The Secretary to the Hon'ble Chief Minister
The OSD to Hon'ble Finance Minister.
The Accountant General, A.P.
SF/SCs(Computer No.1233165)

//FORWARDED::BY ORDER//

SECTION OFFICER