

असित गोपाल, भा.व.से.
Asit Gopal, I.F.S
आयुक्त
Commissioner



भारत सरकार
Government of India
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
राष्ट्रीय आदिवासी छात्र शिक्षा समिति
National Education Society for Tribal Students (NESTS)

F.No. NESTS/Civil/EMRS Order/140/2021-22

Date: 18.05.2022

To,
CMD/MD/CEO
HSCL/B&R/WAPCOS/TCIL/MANIDCO/EPIL/NPCC/MTDC

Subject: Abnormally low bid -reg.

Sir,

I would like to draw attention towards the subject cited above and to say that PSUs shall ensure quality of construction works especially in cases wherein abnormally low bids are being quoted by the bidders.

In this context, Department of Expenditure (DoE) OM No 12/17/2019-PPD dated 06.02.2020 (**enclosed**) on the subject of "Predatory Pricing/Abnormally Low Bids" is cited wherein it is stated as follows (verbatim):

"It has come to the notice of this department that procurement entities are facing difficulties in finalization of tenders, in cases of predatory pricing/abnormally low bids. In this connection, para 7.5.7 of the Manual for Procurement of Goods, 2017 issued by Department of Expenditure is being reiterated for information:

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."

Relevant circulars of Ministry of Finance such as DoE OM No 9/4/2020-PPD dated 12.11.2020 (**enclosed**) on the subject- "Additional Performance Security in case of Abnormally Low Bids-(ALBs)" and other extant circulars/guidelines of Govt of India in this regard may also be adhered to while dealing with ALBs. As per Para 5 of the order no provision should be kept in the bid documents regarding additional Security Deposit/Bank Guarantee in case of abnormally low bid.

However, para 5 of said order also says "Where there are compelling circumstances to ask for additional Security Deposit/Bank Guarantee in case of ALBs same should be kept with the approval of next higher authority to authority competent to finalize particular tender of Secretary of Ministry/Department, whichever is lower."

It is seen that rate quoted by agencies for EMRS works in many cases are abnormally low, 15-25 % below the estimated cost. Abnormally low-rate tenders may affect the quality and timely completion of work. In some cases, it has also happened that contractors had quoted 15-25% below the estimated cost and later they have backed out from the work resulting in re-tendering and further delay the project.

As you are aware that the EMRS project is a time bound project, in which construction of 452 schools is required to be completed in a time bound manner. Therefore, competent authority in the PSU may decide for additional Security Deposit/ Bank Guarantee measure in light of para 5 of DoE OM dated 12.11.2020 in the true spirit to avoid impractical and non-serious bids as a special case. This would also result in quality construction and timely completion of work. In this regard, the Government of Odisha vide office memorandum dated 05.04.2021 has also adopted provision of Additional Performance Security (BG) in respect of abnormal bid. Further in case of abnormally low bid, the PSU may decide the tender judiciously in the interest of work.

Yours faithfully,



(Asit Gopal)
Commissioner (NESTS)

No.F.12/17/2019-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

Room No.512, Lok Nayak Bhavan,
New Delhi dated the 6th February, 2020.

OFFICE MEMORANDUM

Subject: Predatory Pricing/ Abnormally Low Bids – Reg.

It has come to the notice of this Department that procurement entities are facing difficulties in finalization of tenders, in cases of predatory pricing/ abnormally low bids. In this connection, para 7.5.7 of the Manual for Procurement of Goods, 2017 issued by Department of Expenditure is being reiterated for information:

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.


(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel.No.24621305
Email: kn.reddy@gov.in

To,

Secretaries of all Central Government Ministries/ Departments

No. F.9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

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).

GOVERNMENT OF ODISHA
WORKS DEPARTMENT

OFFICE MEMORANDUM

No.07556900052021 4559 /W., Bhubaneswar, Dated. the 5-4-2021

Subject:-Additional Performance Security in case of Abnormally Low Bids (ALBs).

Additional Performance Security (APS) is being obtained from the Successful Bidder when the Bid amount is less than estimated cost put to tender to the extent of exact amount of differential cost i.e. estimated cost put to tender minus the quoted amount in shape of Term Deposit Receipt pledged in favour of Divisional Officer/Bank Guarantee in favour of the Divisional Officer from any Nationalized /Scheduled Bank in India counter guaranteed by its local branch at Bhubaneswar within seven days of issue of Letter of Acceptance (LoA) by the Divisional Officer (by e-Mail) to the successful bidder otherwise the bid of the successful bidder shall be cancelled and the Earnest Money Deposit/ Bid Security shall be forfeited. Further, proceeding for Blacklisting shall be initiated against the bidder as per amendment to Para 3.5.5 (v) of OPWD Code, Volume-I vide Works Department Office Memorandum No.14459/W dated 20.09.2018.

2. The State Government is in receipt of many representations that on account of slowdown in economy due to the pandemic COVID-19, there is acute financial crunch among many contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of the contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Additional Performance Security in the Government Contracts.

3. In view of the above, the State Government is pleased to fix the following rate of Additional Performance Security:

Sl No.	Range of Difference between the estimated cost put to tender and Bid amount	Additional Performance Security to be deposited by the successful bidder
i.	Below 5%	No Additional Performance Security
ii.	From 5% and above and below 10%	50% of (Difference between estimated cost put to tender and Bid Amount)
iii.	From 10% and above	150% of (Difference between estimated cost put to tender and Bid Amount)

4. This shall take effect from the date of issue of this Office Memorandum.

5. The codal provision exists in Works Department Office Memorandum No.14459/W dated 20.09.2018 stands modified to the above extent with effect from the date of issue of this Office Memorandum.

By order of Governor,


(Dr. Krishan Kumar) 5/4

Commissioner-cum-Secretary to Government

Memo No. 4560 W., Dated 5-4-2021

Copy forwarded to Private Secretary to Hon'ble Chief Minister, Odisha/Private Secretary to Hon'ble Minister, Works, Steel & Mines, Odisha for kind information of Hon'ble Chief Minister, Odisha & Hon'ble Minister, Works, Steel & Mines, Odisha.

Memo No. 4561 W., Dated 5-4-2021
 FA-cum-Additional Secretary to Government

Copy forwarded to OSD to Chief Secretary, Odisha/Sr. Private Secretary to Development Commissioner-cum-Additional Chief Secretary, Odisha/ Sr. Private Secretary to Principal Secretary, Finance Department for kind information of Chief Secretary/Development Commissioner-cum-Additional Chief Secretary/Principal Secretary, Finance Department.

Memo No. 4562 W., Dated 5-4-2021
 FA-cum-Additional Secretary to Government

Copy forwarded to the Principal Accountant General (A&E), Odisha, Bhubaneswar/Principal Accountant General (E&RSA), Odisha, Puri Branch, Puri for information and necessary action.

Memo No. 4563 W., Dated 5-4-2021
 FA-cum-Additional Secretary to Government

Copy forwarded to All Departments of Government/ Managing Director, OB&CC Ltd., Bhubaneswar/Managing Director, OCC Ltd. Bhubaneswar/Managing Director, OSPH&WC, Bhubaneswar for information and necessary action.

Memo No. 4564 W., Dated 5-4-2021
 FA-cum-Additional Secretary to Government

Copy forwarded to EIC (Civil), Odisha/EIC (Buildings), Odisha/EIC, Water Resources, Odisha/EIC (Rural Works), Odisha/All Chief Engineers, under the Administrative Control of Works Department, R.D. Department, Water Resources Department and H&UD Department/All Superintending Engineers (under Works Department)/All Executive Engineers (under Works Department) for information and wide circulation among subordinate offices.

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FA-cum-Additional Secretary to Government
 5-4-2021