

## CHAPTER - 10

### SECURITIES

#### 10.1 Formats

The contractor shall provide the securities in favour of the purchaser in the form and format specified in the contract.

##### 10.1.1 Applicable for contracts in INR

10.1.1.1 The security should be executed by State Bank of India or any Indian nationalised bank or Scheduled Banks as appearing in the second schedule of Reserve Bank of India (other than co-operative and Grameen Banks) or as specified in the contract, on a non- judicial stamp paper of appropriate value.

##### 10.1.2 Applicable for contracts other than in INR

10.1.2.1 Bank Guarantee (BG), when issued in Indian Rupee, shall be executed by State Bank of India or any Indian nationalised bank or Scheduled Banks as appearing in the second schedule of Reserve Bank of India (other than co-operative and Grameen Banks), on a non- judicial stamp paper of appropriate value.

10.1.2.2 The BG, when issued in currency other than Indian Rupee, shall be executed by the bank/branch situated outside India on their letter head and having at least five (5) branches out of the country of the contractor or three (3) branches in continents other than the continent where the contractor is situated.

#### 10.2 Purpose of various securities:

- 1) Security Deposit is the security towards satisfactory execution of the purchase order/contract.
- 2) Security for Advance payment and stage payments, i.e., any payment made before despatch of the material from supplier's premises, for achieving pre-defined milestones.
- 3) Performance Bond as a back-up surety for warranty obligation.
- 4) Security towards re-export of the defective instrument/equipment to the manufacturer within the warranty period /beyond the warranty period for arranging repair/replacement.
- 5) Security for issue of FIM.

### **10.3 Security Deposit (SD)**

10.3.1 SD is obtained from the successful bidder for satisfactory performance of the contract. “Satisfactory performance of the contract here means acceptance of the material in respect of supply contracts and satisfactory completion of installation & commissioning and acceptance of the material/equipment in respect of contracts involving installation/erection & commissioning in the scope of supplier”.

10.3.2 Quantum of SD

10.3.2.1 For contracts other than Rate/Running Contracts, SD shall be for an amount of 10% of the basic value of the contract value.

10.3.2.2 For Rate/Running Contracts

10.3.2.2.1 For Rate/Running Contract, SD amount shall be as indicated in the contract.

### **10.4 Adjustment towards Security Deposit**

10.4.1 In case the successful bidder expresses his inability to submit the BG for the required amount, SD can also be accepted in the form of Demand Draft/Banker’s cheque drawn in favour of the Pay & Accounts Officer of the concerned Unit or any other form. It shall be the sole discretion of the competent authority to accept or otherwise such request of the successful bidder and the bidder shall have no claim on such discretion of the competent authority.

10.4.2 In case the successful bidder makes a request to adjust towards SD of the contract placed on him from:

- (1) EMD furnished along with the tender and agrees for submission of remaining amount of Security Deposit either in form of BG or Demand Draft/Banker’s Cheque or as specified in the Purchase Order.
- (2) **FOR INR CONTRACT:** Retention of an amount equivalent to Security Deposit out of pending bills of the contractor and are due for payment, against any other contract.
- (3) **FOR NON INR CONTRACT:** Retention of an amount equivalent to Security Deposit out of pending bill of the contractor, if any, against any other contract provided the supplier agrees for release of part payment and amending the Payment Term/Letter of Credit, as the case may be, to that effect.

The competent authority may consider such requests wherever possible provided the contract against which the bill(s)/Invoice(s) raised or sufficient amount available

against the executed contract has become due for payment and no other recovery is due from the contractor against any other contract.

## **10.5 Validity of SD**

10.5.1 The SD should be valid upto at least 2 months beyond the contractual date for completion of the order.

## **10.6 Failure on the part of the Contractor to Furnish SD**

10.6.1 In case of failure on the part of the Contractor to comply with the requirement of SD, the Purchaser may cancel the Contract or any part thereof and invoke the provision in DPS General Terms & Conditions of Contract.

10.5.2 In respect of firms who fail to furnish SD, wherever called for in the Contract, they will be considered for action as specified in Chapter 'Source Registration' in addition to the action as per provisions laid down in DPS General Terms and Conditions of Contract.

10.5.3 In case of failure of the firm to submit SD, the EMD furnished by them will be forfeited.

10.5.4 If, however, a request is received from the Contractor for extension of time for submission of SD, the same may be considered in exceptional cases on merit and additional time may be considered as per the conditions of NIT with the approval of competent authority.

10.5.5 In case of failure on the part of the contractor to submit SD as per conditions of the contract and also fail to execute the contract, the purchaser will have right to recover SD amount from any of the pending claims that has become due for payment or may become due for payment at later date.

## **10.6 Renewal of SD**

10.6.1 Where execution of the Contract is going to be delayed beyond the period for which SD furnished is valid, the Officer concerned will ensure that SD is sufficiently extended prior to extension of contract.

10.6.2 Wherever the security is to be renewed/revalidated, this should be done by the concerned issuing authority by documents executed in a suitable manner on a non-judicial stamp paper with reference to the earlier Security and not by a simple letter given by the issuing authority concerned.

## **10.7 Refund of SD**

SD is liable to be refunded when the Contractor has duly completed as per conditions of contract.

## **10.8 Forfeiture of SD**

10.8.1 Security obtained towards SD should be invoked and credited to the Government account when there is a breach on the part of the Contractor in execution of the contract after following due procedure.

10.8.2 If any bank delays its action in releasing the guarantee money thereby giving an opportunity to a firm to take any measures preventing the encashment of the guarantee, following course of action should be taken :-

10.8.2.1 To report to the Central Office of the bank clearly expressing that because of the bank's failure to take timely action the Government had to incur loss with a request to honor the conditions of BG or report to the authority who issued the security clearly intimating that failure to honor the commitments the purchaser within the specified time the purchaser shall be within his right to approach the appropriate authorities for encashment of the security together with cost and interest thereof, as the case may be.

10.8.2.2 An administrative decision should be taken to debar acceptance of BGs issued by such branches of the bank or securities from such firms.

## **10.9 Advance Payment Security**

10.9.1 Where advance payments are admitted in the contracts, such advance payments are interest bearing. The interest rate shall be as indicated in the contract.

10.9.2 The contractor shall submit the advance payment security for the amount of advance admitted plus the interest for the period of completion of contract.

10.9.3 If it becomes necessary to extend the contract beyond the original period, the contractor shall extend the advance payment security and also enhance the security amount to cover the interest for the entire period i.e. original delivery date plus the extended date of contract.

10.9.4 The advance payment security shall be discharged and returned to the supplier after successful completion of the contract or the advance payment is adjusted as per terms of the contract.

10.9.5 In case of failure on the part of the contractor to complete the contract, the purchaser shall forfeit the security after following due procedure.

## **10.10 Progressive/Mile Stone Payment Security**

- 10.10.1 Generally progressive/milestone payments are non interest bearing.
- 10.10.2 The progressive/milestone payment security shall be for the amount payable against completion of each pre-defined milestone.
- 10.10.3 If it becomes necessary to extend the contract beyond the original delivery date, the progressive/milestone payment will attract the interest, at the rate specified in the contract, for extended period of contract. In such an event, the contractor shall enhance the value of the security to cover the interest part for delayed period and also extend the security.
- 10.10.4 In case of failure on the part of the contractor to complete the contract, the purchaser shall forfeit the security after following due procedure.

## **10.11 Performance Bond Security**

- 10.11.1 Performance Bond Security is for the performance of the stores/equipment supplied during the warranty period agreed upon in the contract.
- 10.11.2 The amount of the Security shall be as indicated in the contract.
- 10.11.3 The validity of the security shall be as indicated in the contract.

## **10.12 Re-export/repair BG**

- 10.12.1 There could be a situation where the stores received against the contract require repair/replacement etc. during the warranty period. In order to secure the Government interest, the purchaser shall call for submission of BG by the contractor for the cost of the stores/equipment to be returned to the contractor for repair/replacement etc.
- 10.12.2 The BG shall be valid till receipt and acceptance of repaired/replaced stores by the purchaser.
- 10.12.3 In case the contractor is unable to return the repaired/replaced stores for any reason whatsoever, the purchaser shall forfeit the BG.

## **10.13 Security for FIM**

- 10.13.1 Where the contractor is required to manufacture/fabricate the stores ordered out of the purchaser's material or as per the samples of the purchaser or out of the purchaser's moulds as the case may be, before the purchasers' property is parted with the contractor, the contractor shall furnish the security for an amount indicated in the contract.

10.13.2 The security shall be valid till receipt and acceptance of the stores ordered including return and accounting of the leftover purchaser's material or sample or moulds as the case may be.

10.13.3 In case the contractor fails to abide by the terms and conditions of the FIM accounting or damage of purchaser's sample or moulds as the case may be, the purchaser shall forfeit the security after following due procedure.

#### **10.14 Modification in Security**

10.14.1 The SD Security once received in the Office/Department should not be returned to the supplier under whatsoever reasons without discharge.

10.14.2 Securities, other than SD, obtained from suppliers can be returned to them for correction/ modification where no payment is effected and /or accepted.

#### **10.15 Verification of genuineness of BG**

10.15.1 BG shall be subject to verification for the genuineness from the issuing bank.

10.15.2 In respect of BGs received from Overseas Suppliers

10.15.2.1 Advice of SBI should be obtained as to whether the foreign bank providing BG is a first class bank of international repute before taking a decision whether such BG should be confirmed by any one of the nationalized bank or SBI in India. The details of the banks of International repute have to be obtained from RBI/SBI and the same can be included in the NIT as the banks from which BGs are acceptable by the Department.

10.15.2.2 E-BGs and confirmation through SFMS are also acceptable, however, the entire text of the BG should be obtained and verified for its correctness to ensure that Government interest with regard to claim is safeguarded.