FORCE MAJEURE CLAUSE (FMC) AND EXTENSION OF TIME


2. Justification for inclusion of present situation under the force majeure cases and consequent action to be taken in view thereof are elaborated in the aforesaid OM. It has been clarified that the prevailing situation is covered under the FMC and therefore the parties to contract may face problems in fulfilment of contractual obligations.

3. It is further stated that date of completion of contractual obligation which were to be completed on or after 20 Feb 2020 shall be extended for a period of three to six months without any cost or penalty to the contractor. The extension of time is to be granted only in situations where parties to contract were not in default of contractual obligations as on 19 Feb 2020.

4. The present situation is also covered under the FMC in the GCC of lump sum contract and item rate contract (IAFW-2249) vide Condition 11E. However such condition is not expressly provided in other GCC for supply of stores/articles (IAFW-1815Z). In view of instructions contained in aforesaid OM, the situation is to be covered under FMC of all contract conditions.

5. In view of instructions contained in aforesaid OM, it is hereby directed that all Accepting Officers/Competent Engineer Authority shall essentially consider the prevailing situation as one of the reasons for extension of time wherever the contractor has approached with such request subject to following conditions:

   (a) Contractors must have invoked the FMC clause. Any request for extension of time made after 20 Feb 2020 citing the prevailing situation as one of the reason may be treated as invocation of FMC.

   (b) Contracts where the original/extended date of completion was 19 Feb 2020 or earlier shall first be examined for EOT based on reasons other than prevailing situation arising out of lockdown for which request for EOT was made prior to that date viz 19 Feb 2020. This is essential to ascertain whether the contractual obligations were to be completed or not by 20 Feb 2020 and whether there was any default in the contractual obligation as on 19 Feb 2020.

   (c) The period of extension of time to be granted on this reason of FMC shall be decided by the Accepting Officer/Competent Engineer Authority based on the period of the actual delay associated with the reason mentioned above.
(d) While placing deviation order for EOT, the reason for delay period associated with FMC as granted shall be specifically mentioned to safeguard the Govt interest in case the contractor later on invokes arbitration and raises claim of compensation due to prolongation of contract period.

6. All formations shall take note of above instructions and ensure that appropriate action is taken in the matter.

Encl: As above

(R P Singh)
Jt DG (Contracts)
for Engineer-in-Chief

Copy To

File No. 66546/Manual/E8
OFFICE MEMORANDUM

Subject: Force Majeure Clause (FMC)

Attention is invited to Department of Expenditure’s O.M. No. 18/4/2020-PPD dated 19th February, 2020 on the invocation of Force Majeure Clause (FMC). Vide the O.M., it was clarified that disruption of supply chains due to spread of Coronavirus will be covered under FMC which could be invoked, wherever considered appropriate, following the due procedure as stated in para 9.7.7. of the Manual on Procurement of Goods.

2. Subsequent to issuance of the above referred O.M., further disruptions have affected transportation, manufacturing and distribution of goods and services in the country. Limitations placed on the movement of men and material as per the guidelines issued by the Ministry of Home Affairs (MHA) under the Disaster Management Act, 2005 (DM Act 2005) and the respective State and UT governments from time to time have severely impaired the fulfilment of contractual obligations for supply of goods, works and consultancy services (including other services), and affected the volume of vehicular traffic.

3. Attention in this regard is invited to para 9.7.7 of the “Manual for Procurement of Goods 2017”, Para 6.4.2 of the “Manual for Procurement of Works 2019” and para 8.14.1 of the “Manual for Procurement of Consultancy and other Services 2017” issued by the Department of Expenditure. The above referred three Manuals recognize extraordinary events or circumstances beyond human control leading to delays in or non-fulfilment of contractual obligations. In a situation of such events happening, and after following due procedure, parties to the contract are allowed flexibility to invoke FMC following prescribed due procedure.

4. It is recognised that in view of the restrictions placed on the movement of goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Governments, it may not be possible for the parties to the contract to fulfil contractual obligations. In respect of Public-private Partnership (PPP) concession contracts, a period of the contract may have become unremunerative. Therefore, after fulfilling due procedure and wherever applicable, parties to the contract may invoke FMC for all construction/works contracts, goods and services contracts and PPP contracts with Government Agencies 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
three months and not more than six months without imposition of any cost or penalty on the contractor/concessionaire. Concession period in PPP contracts ending on or after 20th February 2020 shall be extended by not less than three and not more than six months. The period of extension (between three and six months) may be decided based on the specific circumstances of the case and the period for which performance was affected by the force majeure events.

5. It is clarified that invocation of FMC would be held valid only in a situation where the parties to the contract were not in default of the contractual obligations as on 19th February, 2020. It is further clarified that invocation of FMC does not absolve all non-performances 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/s on account of COVID-19 global pandemic. It may be noted that, subject to above stated, all contractual obligations shall revive on completion of the period.

( Kotluru Narayana Reddy)
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To,
Secretaries of all Central Government Ministries/Departments