



BUILDERS' ASSOCIATION OF INDIA

(All India Association of Engineering Construction Contractors and Builders)
G-1/G-20, 7th Floor, Commerce Centre, J. Dadajee Road, Tardeo, Mumbai - 400034
Tel: (91-22) 23514802, 23520507, 23521328
Website: www.baionline.in, E-mail : baihq.mumbai@gmail.com
@BAINational @BAINational <http://youtube.com/user/baihqmumbai>

Ref: 144/M/2021-2022 dated 28th May, 2021

Smt Nirmala Sitharaman Ji,
Hon'ble Finance Minister,
Ministry of Finance,
134-A, North Block
New Delhi -110011

Respected Madam,

Sub: Second Wave of Covid 19- Disruption in Construction Activity- Office Memorandums- Reg

Under your stellar and dynamic leadership you have been reviewing system and procedure to optimize outputs and outcomes of public expenditure. We are very sure that with your honest and able approach expenditure management in the central Ministries will be optimized.

The Builders Association of India (BAI) is the apex All-India body of engineering construction contractors and real estate companies founded in the year 1941 with more than 20,000 business entities as its members through nearly 200 chapters across the country.

As you are aware, second wave beginning in March 2021 of Covid 19 has been much stronger and larger than the first, with shortages of vaccines, hospital beds, oxygen cylinders and other medicines in various parts of the country. In the absence of a nationwide lockdown and with Covid-19 cases on a steady rise, a number of states in India have imposed complete lockdowns to reduce the spread of the coronavirus virus amid a deadly second wave. Even the states that have not opted for state-wide lockdowns have induced lockdown-like strict curbs on the movement of people.

Hence, the construction activities have been disrupted and even though there is no ban as such on construction works, the works have suffered and have, therefore, either stopped or working with hardly any activity. The various reasons are:

- 1) **Lack of Migrant Labour:** The fear of Corona is making migrant labour leave and go back to their hometown. The contractors have tried making all efforts like financial help, arrangement of medical facilities, hygienic accommodation observing the social distancing norms and wholesome diets to make them comfortable. All these efforts have been in vain as the fear of Corona has pushed these labours in going back to their hometown.

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Delhi Office: D1/203, Aashirwad Complex, Green Park, New Delhi-110016 Ph: 011-26568763, 40612800, 9555448763 E-mail: baidelhi16@gmail.com

B.A.I. Centres at:

Adilabad, Agra, Agra Cantt, Ahmedabad, Ahmednagar, Aligarh, Allahabad, Alleppy, Aluva, Amravati, Amaravathi, Andaman & Nicobar, Angamali, Aurangabad, Avadi, Baghat, Bangalore, Baramati, Bareilly, Baroda, Bharuch, Bhopal, Bilaspur, Bhubaneswar, Calicut, Chandigarh, Changanacherry, Chengai, Chennai, Chettinadu, Chitradurga, Coimbatore, Delhi, Delhi East, Delhi North, Delhi South, Delhi West, Dhanbad, Dharwad, Dhule, Dindigul, Durgapur, Durg-Bhilai, Erode, Ettimanoor, Faridabad, Gautam Buddha Nagar, Gandhinagar, Ghaziabad, Goa, Greater Hyderabad, Greater Jaipur, Greater Noida, Guntur, Gurgaon, Guwahati, Haldia, Hapur, Hasan, Hyderabad, Ichalkaranji, Indore, Jabalpur, Jagdalpur, Jaipur, Jalgaon, Jaisalmer, Jamshedpur, Jodhpur, Kalpakkam, Kallakurichi, Kamareddy, Kanchipuram, Kanker, Kannur, Kanpur, Kanpur-South, Kanyakumari, Karaikal, Karimnagar, Karnal, Karnavati, Khammam, Kochi, Kodaikanal, Kodungallur, Kolhapur, Kolkata, Kollam, Kottayam, Kumbakonam, Kundli, Latur, Lori, Lucknow, Madhuranthakam, Madurai, Mahaboobnagar, Malegaon, Mandya, Mangalore, Mayiladuthurai, Medchal, Medak, Meerut, Meerut Cantt, Modinagar, Moradabad, Moradabad Nor, Mysore, Mumbai, Muvattupuzha, Muzaffarnagar, Mysore, Nagapattinam, Nagpur, Nalgonda, Namakkal, Nanded, Nandurbar, Nasik, Nellore, Neyveli, Nilgiri, Nizamabad, Ongole, Panipat, Parbhani, Patna, Perambalur, Phaltan, Pink City Jaipur, Pondicherry, Ponnur, Poonamallee, Por-Ramangamdi, Pudukkottai, Pune, Raichur, Raigad, Raipur, Rajahmundry, Rajkot, Ramanathapuram, Ranchi, Ranga Reddy, Ravulapalem, Salem, Sangamner, Sangli, Satara, Shahda, Shimoga, Silchar, Sitapur, Solapur, Surat, Tambaram, Tanuku, Tenkasi, Tezpur, Thanjavur, Theni, Thirupurur, Thiruthurai, Thiruvallur, Thiruvannamalai, Thiruvazhur, Thripunithura, Thrissur, Trichirapalli, Tirunelveli, Tirupur, Tiruvallur, Thiruvananthapuram, Tuticorin, Udumalpet, Uthanasagar, Vellore, Vijayawada, Vikarabad, Villupuram, Visakhapatnam, Vizag Steel City, Wai, Warangal, Western I I P Electrical, Yadadri

- 2) **Lack of Construction Material:** Due to lockdowns in the various states, the manufacturing is thus impacted and the transportation of the material is also faced a huge impact due to shortage of drivers as again they have left for their hometown due to fear of lockdown. Moreover since the construction material does not come under the essential commodities, it is not being allowed to be transported. Due to the absence of construction material, migrant labour is also leaving as there is no work. Even if any manufacturer/ supplier is ready to send the goods, they are unable to reach the site.
- 3) **Lack of Staff at Work Site:** The staff at various sites have fallen prey to Corona and the attendance has been very erratic. Because of one incident of Corona, other are also being placed under quarantine thus effecting the entire progress of the work.
- 4) **Lack of Client's Staff:** Even the officers from the monitoring client side are not coming to site because of fear of Corona. Some have either caught the disease and others are taking precautions.
- 5) **Lack of Staff of Third Party/ Consultant-** The staff of the third party / consultant are unable to attend to the requirements of the site thus impacting the progress at site.
- 6) **Lack of Hired Construction Machinery:** Again the scarcity of the drivers, the hired construction machines are idle.

Therefore it can be clearly seen that construction industry is going through a very difficult time and you would also agree that the second wave of Corona is causing more damages than the first one we saw in 2020 and has caused various disruptions. The contractors are incurring considerable financial losses as the expenditure on the enormous infrastructure has to be maintained even if the work has been stopped. Some of our members have even met their unfortunate demise due to this dreaded disease and some are still suffering.

The Department of Expenditure was kind enough to issue several Office Memorandum during the first wave of Corona in 2020 and to tide over these difficult times and on similar line we earnestly request.

1. Vide Office Memorandum No F 18/4/2020-PPD dated 19 February 2020 it was clarified that corona virus in 2020 will be considered as a case of Force Majeure Clause (FMC) and FMC may be invoked.

On similar lines, this second wave of corona virus in 2021 may also be clarified to be considered as a case of Force Majeure Clause (FMC) and FMC may be invoked

2. Vide Office Memorandum No F 18/4/2020-PPD dated 13 May 2020 it was directed that - due to Corona virus and hence the FMC clause- the completion period of the existing contracts shall be extended for a period of up to 6 months for all contractual obligations which had to be completed on or after 20th Feb 2020.

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On similar lines new directions may be issued that the completion period of the existing contracts shall be extended for a period of up to 6 months for all contractual obligations which had to be completed on or after 20th Feb 2021.

3. Vide Office Memorandum No F 18/4/2020-PPD dated 13 May 2020 it was directed to return the value of Performance Security to the contractor as is proportional to the contract work completed.

On similar lines, new directions may be issued to return the value of the Performance Security to the contractor as is proportional to the contract work completed.

4. Vide Office Memorandum No. F.9/4/2020-PPD dated 12 November 2020 it was directed to reduce the Performance Security from existing 5-10% to 3% of the value of the contract. Further it stated that for all existing contracts/ all tenders/ contracts issued/ concluded till 31.12.2021 should also have the provision of reduced Performance Security.

On similar lines this deadline of 31.12.2021 may be increased till 31.12.2022.

5. Vide Office Memorandum No. F.9/4/2020-PPD dated 12 November 2020 it was directed that no provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Documents. The above instructions will be applicable for all the tenders issued till 31.12.2021.

On similar lines this deadline of 31.12.2021 may be increased till 31.12.2022.

Further as we have already detailed, the entire construction industry is going through a very bad time and hence requires all reasonable and considerate help. You have been kind enough to reduce the burden on the contractors by issuing various Office memorandums as detailed above during the first wave of corona.

However few inadvertent omissions have been there to this noble gesture. These are:

1. **Return of Retention/ Security Money.** The Retention Money (which is a part of the Performance Security till construction period) should also be released in proportion to the work already executed. Further retention money for a period of 6 months may not deducted from the bills raised by the contractors.
2. **Penalty in delay in Submission of Performance Security/ Bank Guarantee:** Due to the financial hardships because of Corona and as detailed above, the penalty for delay in submission of Performance Security/ Bank Guarantee in the new contracts entered into during February 2021- September 2021 should be waived of.

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In the end we also respectfully submit that:-

Option 1: As the executing authorities have the retention money with them (which is a part of the Performance Security till construction period) the additional Performance Bank Guarantee should be released totally so that the bank charges on the these bank guarantee could be saved and help in this difficult time. In such cases the executing authorities will have the retention money as the safeguard.

Option 2: In case there is some reservation regarding releasing the entire performance bank guarantee, 50% of the retention money (which is a part of the Performance Security till construction period) with the executing authorities should be released.

We hope that you would give your most sympathetic consideration to these very genuine request and may issue office memorandum which would be applicable to **all departments, attached offices organisations working under central government.**

Few organisations had delayed the implementation of the guidelines issued by you vide various office memorandums detailed above and thus the relief was delayed/ denied to the contractors for several months.

Once the lockdown is lifted, you may take out some time from your busy schedule to give a sympathetic audience to members of our association who are soldiers at the front in your endeavour for the growth of the Country.

Thanking you,

Yours faithfully,



R.N Gupta
President,
Builders Association of India
Mob: 98100 11139