

ANDHRA PRADESH POWER GENERATION CORPORATION LIMITED
ABSTRACT

APGENCO – Regulation – Earnest Money Deposit (EMD) & Further Security Deposit (FSD) by GoAP – Relaxation of certain contractual obligations – Measures for providing immediate relief to the Agencies/Contractors in view of the outbreak of the COVID-19 epidemic – Adoption of orders of GoAP – Orders – Issued.

G.O.O.No.605/CGM(Adm, IS&ERP)/2020

Dt.12.03.2021

Read the following:-

1. G.O.O.No.129/JS(Per)/2016, dt 15.07.2016
2. G.O.Rt.No.2451, Finance (HR-V-TFR-A&L-EWF) Dept, Dt.07/10/2020
3. G.O.Rt.No.266, Finance (HR-V-TFR-A&L-EWF) Dept, Dt 15/02/2021

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ORDER:-

In the G.O. 2nd & 3rd read above GoAP has issued certain relaxation of contractual obligations in view of COVID-19 pandemic for payment of Earnest Money Deposit (EMD), Extension of Time (EOT) and Bank Guarantees(BG)/Further Security Deposit (FSD).

2. After careful examination, the APGENCO hereby adopts the orders issued by the Government of Andhra Pradesh in G.O.Rt.No.2451, Finance (HR-V-TFR-A&L-EWF) Dept, Dt 07.10.2020 and G.O.Rt.No.266, Finance (HR-V-TFR-A&L-EWF) Dept, Dt 15.02.2021 (copies enclosed) in view of the outbreak of the COVID-19 epidemic, and for providing immediate relief to the Agencies/Contractors engaged in the execution of works in APGENCO.

3. These orders are also available on APGENCO website and can be accessed at the address www.apgenco.gov.in

B.SREEDHAR
MANAGING DIRECTOR

To
All Chief Engineers
All FA&CCAs/Dy.CCAs
All Superintending Engineers
All Executive Engineers
The Chief General Manager (Adm, IS & ERP)

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Copy to the :-

PS to Chairman/APGENCO
SE (T) to Managing Director/VS/VJA
Dy.EE to Managing Director/VS/VJA
Dy.EE to Director (HR & IR)/VS/VJA
SAO to Director (Finance & Commercial)/VS/VJA
Dy.EE to Director (Coal & Logistics)/VS/VJA
Pay officer // Accounts officer (CPR)/VS/VJA,
Stock File/Spare.

C.No.CGM(Adm,IS &ERP)/DS(Estt)/AS(Reg)/PO.(PNT & Reg)/46/2021

// FORWARDED :: BY ORDER //


PERSONNEL OFFICER

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**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Finance Department – Treasury Financial Rules – Earnest Money Deposit (EMD) & Further Security Deposit (FSD) – Relaxation of certain contractual obligations in view of COVID-19 pandemic- Further Orders – Issued.

Finance (HR-V-TFR-A&L-EWF) Department

G.O. Rt. No.266

**Dated:15 -02-2021
Read the following:**

- 1.G.O.No.2451,Finance(HR-V-TFR-A&L-EWF) Department, dated 7-10- 2020.
 2. Govt of India Memorandum No.F.9/4/2020-PPD, dated 12-11-2020.
 3. Govt. Memo No. ICDO1-COOR/18/2020- Reforms, dated: 06- 01-2021.
 - 4.W.R.D.File No ICD01-COOR/18/2020-MLO-III/(Comp.No 1305246)
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ORDER:

In the G.O 1st read above, the Government in Finance (HR-V-TFR-A&L-EWF) Department have ordered for the adoption of certain measures in the works agreements towards securities for performance & defect liabilities by the Government of Andhra Pradesh, with the intention to provide immediate relief to the agencies/contractors engaged in the execution of works, duly keeping in view the reliefs granted by the Government of India & certain other State Governments, in view of outbreak of COVID-19 pandemic, specifically with regard to the stipulations relating to Extension of Time(EoT) & Further Security Deposit (FSD).

2. In the Memorandum 2nd read above, the Government of India, on account of the slowdown of the economy due to COVID-19 pandemic, have issued certain further guidelines regarding reducing of Performance Security, subject to certain conditions specified therein.

3. After the receipt of the aforesaid guidelines, the matter regarding the extension of similar relief by the State Government, with reference to stipulations relating to EMD & FSD, in view of outbreak of Covid-19 pandemic, has been referred by the Finance Department to the Board of Chief Engineers (BoCEs) through the W.R. Department, for examination & for furnishing specific recommendations in the matter. In the reference 4th read above, the W.R. Department has communicated the recommendations of the BoCEs, as resolved in their meeting held on 07-01-2021.

4. Government, after careful examination of the matter, & in continuation to the orders issued in the G.O. 1st read above, hereby order the adoption of the following further measures for providing relief to the agencies/contractors engaged in the execution of works in the State.

- a) The EMD @ 1% of ECV shall be collected, as per the existing procedure, from all the participating bidders for fresh tenders.

DS/ESU

Pl. put up a
note to Board

ANUP
26/2/2021

Pl. put up
AST regulations

26/2/2021

b) The EMD @ 1% on Contract Value shall be collected, in the form of B.G./D.D. from the successful bidder at the time of concluding the agreement, instead of the prevailing 2.5% of contract value.

c) After receiving the EMD mentioned in (b) above from the successful bidder, the EMD collected in (a) above will be returned to the successful bidder at the time of concluding the Agreement.

d) In respect of the ongoing works/agreements, out of the EMD of 2.5 % on Contract Value collected in the form of B.G./D.D. at the time of agreement, 1.5 % on Contract Value shall be returned in the same form as it was collected i.e., B.G./D.D. to the concerned agencies/contractors.

e) During intermediate bill payments, the Further Security Deposit (FSD) shall be collected @ 2% instead of the existing 7.5 % or any other specific percentage mentioned in the agreement, in form of cash on the value of work done from the agencies/ contractor's running account bill, & the FSD shall not be released in exchange of B.G.s.

f) The amount of FSD accumulated to 2% on Contract Value at the end of final bill & the 1% EMD in the form of B.G./Cash/DD will be returned to the agency/ contractor on the successful completion of the Defect Liability Period (DLP)/ maintenance period (+) 28 days' grace period from end of DLP /maintenance period (or) from the date of check measurement of the rectification plus 28 days of grace period in case the defect rectification is completed beyond the DLP / maintenance period.

5. The aforesaid relief shall be made applicable to all the existing agreements in force & the fresh agreements concluded till 31st December 2021 and such relief would continue to apply till the closure of the contract or till 31-03-2023, whichever is earlier.

6. The usual procedure of collecting the EMD @ 2.5% (1+1.5%), as per G.O.No.94, I&CAD Department, dated 1-7-2003 shall be restored w.e.f. 1-1-2022 for new works i.e., works for which agreements are concluded on or after 1-1-2022.

7. The recovery of FSD @ 7.5% on the value of the work done or any other specific percentage mentioned in the agreement shall be restored for the works for which agreements are concluded on or after 1-1-2022.

8. The relief/s provided by this order shall not be made applicable to contracts which are under dispute or wherein arbitration/court proceedings have commenced or are contemplated. Agreements ordered to be closed on mutual consent basis can be given this relief. All the concerned D.D.O.s shall append a certificate to this effect while extending the relief measure/s & the P.A.O.s concerned shall ensure the same prior to releasing the balance EMD /FSD & any deviation will be viewed seriously.

9. The relief/s extended vide this order is subject to be revoked/modified, as & when found warranted by the Government.

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

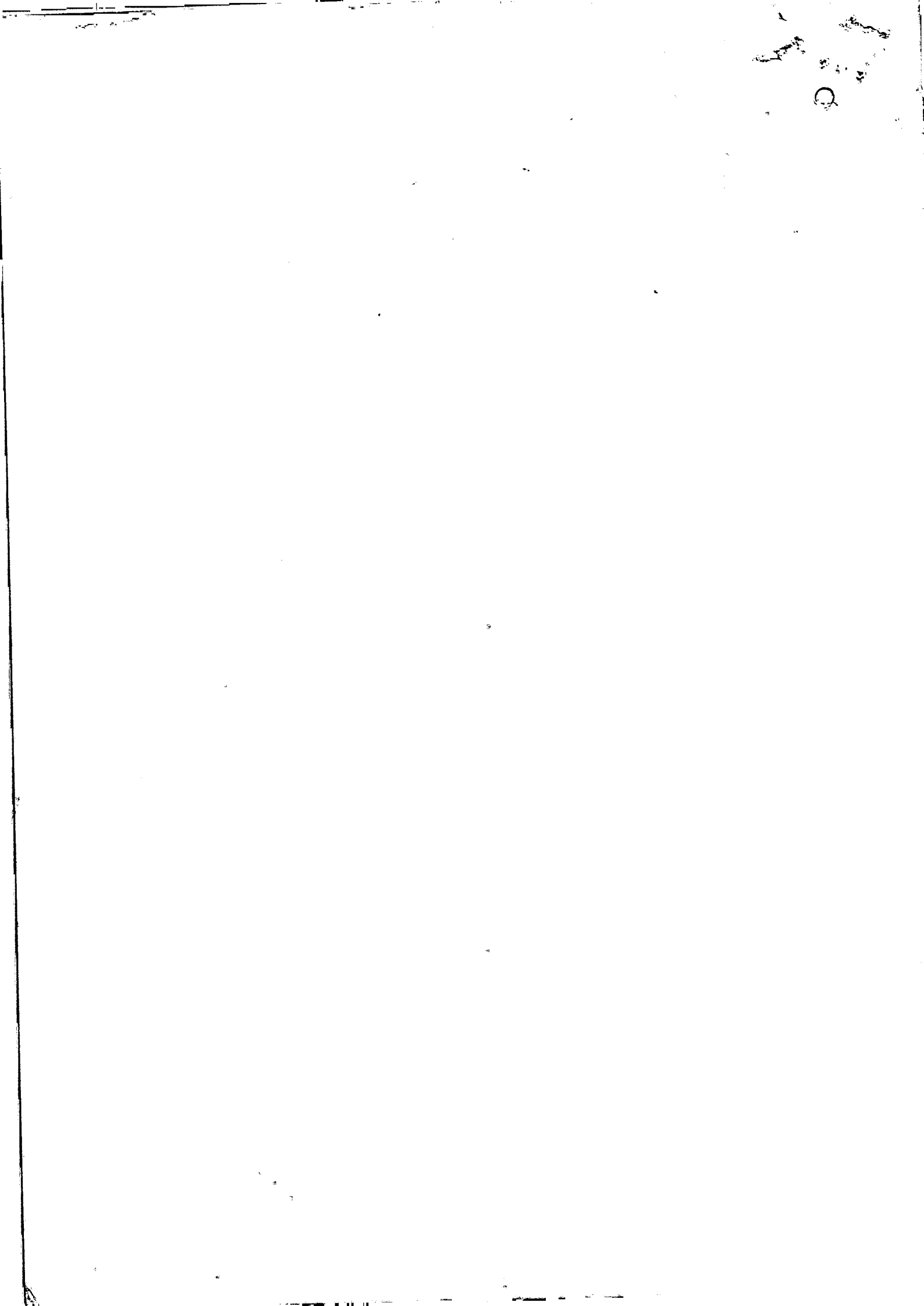
(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**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)

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SECTION OFFICER



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**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.

10. The relief/s provided by this order are applicable to the L.S./E.P.C./E.A.P/etc., contracts entered into with agencies/contractors by all Departments, Public Sector Undertakings, Societies, Universities, Local Bodies and all other Institutions of the Government of Andhra Pradesh.

11. The Chief Executive Officer, A.P.C.F.S.S. shall make necessary changes in the CFMS software to facilitate the extending of the reliefs provided in this order.

12. A copy of this order is available in www.ap.gov.in/goir.

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

**SHAMSHER SINGH RAWAT
PRINCIPAL SECRETARY TO GOVERNMENT**

- To
- All the Departments of Secretariat.
- All the Heads of the Departments.
- The Engineer-in-Chief (AW/IW) & Chairman,BoCEs, The Water Resources Department.GoAP.
- The Director of Works Accounts, A.P.
- The Director of Treasuries, A.P. The Pay & Accounts Officer, A.P.
- The Chief Executive Officer, APCFSS, Ibrahimpatnam
- Copy to:
- The Secretary to the Hon'ble Chief Minister
- The OSD to Hon'ble Finance Minister.
- The OSD to Chief Secretary.
- The Private Secretary to the PFS, Finance Department.
- The Private Secretary to Hon'ble Minister for Water Resources.
- The Private Secretary to the Secretary to Government, WRD.
- The Accountant General, A.P.
- SF/SCs (1310278)

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SECTION OFFICER

