



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

## National Highways Authority of India

(Ministry of Road Transport & Highways)

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No. 11041/21/2002/Admn.III

March 15, 2004

### **POLICY MATTERS-ADMINISTRATION/FINANCE (79/2004)**

(Decision taken on Finance Division file No. NHAI/F&A/Policy Matter/2003/210)

Sub: Procedure for seeking extension or invocation of the Bank Guarantee(s)

Further to the Policy Circular (46/2003) of even number dated 5<sup>th</sup> May, 2003, vide which the procedure for maintenance and release of bank guarantees (BGs) was prescribed, the following procedure for seeking extension or invocation of bank guarantees is prescribed-

- (i) It may be noted that Bank Guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and the primary contract between the party at whose instance the bank guarantee is given and the beneficiary. Banks are within their legal rights in rejecting claims/invocations made contrary to the terms of the bank guarantee. Hence claims/invocations should be made by inviting specific reference to the *default in the performance guaranteed under the bank guarantee*. It may always be ensured that the claim/invocation is made by or on behalf of the beneficiary (i.e., if the guarantee is issued favoring Chairman, NHAI, the invocation may be made by or on behalf of the Chairman). Care may also be taken to ensure that the invocation is not made on conditional grounds (such as "either the guarantee be extended or if not extended the guaranteed amount be paid"), unless such a condition is also part of the performance.
- (ii) The Project Directors/Technical Divisions at HO, as the case may be, may issue notice on behalf of the beneficiary to contractors/consultants to extend the validity of the bank guarantee(s) up to a desired date in accordance with the contract, at least 60 days prior to the date of expiry of the bank guarantee(s).
- (iii) If the extended bank guarantee is not received within the next fortnight, a reminder may be issued.
- (iv) If even after a fortnight of the issuance of the reminder the extended bank guarantee is not received, a notice may be issued to the issuing Bank invoking the bank guarantee taking into account the guidelines at para (i) above, at least 30 days prior to the date of expiry of the bank guarantee(s). Where a performance security is proposed to be encashed, approval of the Chairman, NHAI may also be obtained.

- (v) Acknowledgement in respect of the receipt of the letter by the Bank may be kept on record.
- (vi) Necessary follow up may be made with the Bank to immediately obtain the proceeds against the encashment of the bank guarantee.
- (vii) If before the expiry of the bank guarantee, the extended bank guarantee is received, the notice issued to the Bank invoking the bank guarantee may be withdrawn.

2. Sometimes, requests are received from the contractors/consultants for replacement of bank guarantees. Though there are no specific provisions in the contracts for allowing replacement of bank guarantees, such requests may be considered by the Project Directors/Technical Divisions, subject to the following conditions-

- (i) The fresh bank guarantee may be accepted subject to the guidelines prescribed in this regard, such as, it has been issued by a bank acceptable to NHAI, it is valid up to the period as required under the contract, confirmation from the issuance bank has been received, etc.
- (ii) The fresh bank guarantee includes a clause that "the bank guarantee shall cover all the liabilities arising out of the contract from the date of commencement of the contract".
- (iii) Where a performance security is allowed to be replaced, concurrence of Finance Division at HO may also be obtained.

3. It may be ensured that all notices and other correspondences in the subject matter are made preferably through 'Registered Post with AD'.

4. All concerned are advised to strictly adhere to the procedure prescribed for maintenance, release, seeking extension or invocation and replacement of bank guarantee(s).

This issues with the approval of the Chairman.



[VK Sharma]  
General Manager [Admn.]

All Members  
All CGMs/CVO/GMs  
All DGMs/Managers  
All PIUs/CMUs/SPVs

Copy for information to:  
PS to Chairman