भारत सरकार Government Of India
रेल मंत्रालय Ministry Of Railways
रेलवे बोर्ड Railway Board

No. 2010/CE-I(Spl.)/CT/41 New Delhi, dated 27.04.2011

Addressed to :
As per list attached.

Sub : Recovery of claims of Railways in regard to terminated contracts from running 'on- account bills' : Amendment to Clause-52 of G.C.C.

Ref : Railway Board's letter no. 89/CE-I/CT/74, dated 06.09.1990.

In terms of letter referred to above, Railway Board issued instructions regarding recovery of claims of Railways in regard to terminated contracts from running 'on-account bills' of the contractor. However, amendment to Clause-52 of the General Conditions of Contract (GCC) had not been issued by Railway Board.

Now, Board have reconsidered the matter and decided to amend the Clause-52 of the GCC. Accordingly, following part has been added to the Clause-52 :

"52-A (ii) However, recovery of claims of Railway in regard to terminated contracts may be made from the Final Bills, Security Deposits and Performance Guarantees of other contract or contracts executed by the contractor. The Performance Guarantees submitted by the Contractor against other contracts, if required, may be withheld and encashed. In addition, 10% of each subsequent 'on-account bill' may be withheld, if required, for recovery of Railway's dues against the terminated contract."

Thus, the amended Clause-52 of GCC shall be as detailed in Annexure hereto.

Further, while effecting recovery against a contractor, proper record and accountal shall be maintained and the concerned Zonal Railway/P.U. etc., where the contract was terminated, shall be advised accordingly, in order to enable proper adjustment in their books of accounts.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

संलग्नक / उपरोक्तानुसार

(आलोक कुमार) 27.04.11
कार्यकारी निदेशक/सिविल इंजीनियरिंग(जी)/रेलवे बोर्ड

No. 2010/CE-I(Spl.)/CT/41 New Delhi, dated 27.04.2011

Copy forwarded for information to :

1. The FA&CAOs, All Indian Railways.
2. The Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhawan, New Delhi.

27.4.11
For **Financial Commissioner/Railways**

Annexure

[Ref : Railway Board's letter no. 2010/CE-I(Spl.)/CT/41/ New Delhi, dated 27.04.2011]

Modified Clause-52 of GCC

(Clause 52-A (ii) is the new addition proposed to this Clause-52)

52. Withholding And Lien In Respect Of Sums Claimed : Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the contractor, the Railway shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purpose aforesaid, the Railway shall be entitled to withhold the said cash Security Deposit or the Security if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Railway shall be entitled to withhold and have a lien to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time thereafter may become payable to the contractor under the same contract or any other contract with this or any other Railway or any Department of the Central Government pending finalization or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above, by the Railway will be kept withheld or retained as such by the Railways till the claim arising out of or under the contract is determined by the arbitrator (if the contract governed by the Arbitration Clause) or by the competent court as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the contractor. For the purpose of this clause, where the contractor is a partnership firm or a limited company, the Railway shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner / limited company, as the case may be whether in his individual capacity or otherwise.

52-A Lien In Respect Of Claims In Other Contracts :

(i) Any sum of money due and payable to the contractor (including the Security Deposit returnable to him) under the contract may be withheld or retained by way of lien by the Railway, against any claim of this or any other Railway or any other Department of the Central Government in respect of payment of a sum of money arising out of or under any other contract made by the contractor with this or any other Department of the Central Government.

(ii) However, recovery of claims of Railway in regard to terminated contracts may be made from the Final Bills, Security Deposits and Performance Guarantees of other contract or contracts executed by the contractor. The Performance Guarantees submitted by the Contractor against other contracts, if required, may be withheld and encashed. In addition, 10% of each subsequent 'on-account bill' may be withheld, if required, for recovery of Railway's dues against the terminated contract.

(iii) It is an agreed term of the contract that the sum of money so withheld or retained under this Clause by the Railway will be kept withheld or retained as such by the Railway till the claim arising out of or under any other contract is either mutually settled or determined by arbitration, if the other contract is governed by Arbitration Clause or by the competent court as the case may be and contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this Clause and duly notified as such to the contractor.