

POLICY : TO BE HANDED OVER ON RELIEF

Tele: 23019151

Dte of Contract Management
Engineer-in-Chief's Branch
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg
New Delhi-110 011

66546/Manual/ 287 /E8

14 Mar 2014

List 'A' & 'B'

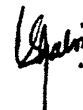
ADG (OF & DRDO)
Secunderabad
PIN 900453
C/O 56 APO

SUBLETTING OF WORKS/EXECUTION OF WORK BY PROXY

1. A contract is an agreement between UOI and a specified contractor, and carrying out work by any other person or contractor on his behalf, is a breach of contract and defies the faith and trust on which, the contract comes into force. When the contractor has to qualify parameters of PQ Criteria as basis of eligibility, assigning work to any other agency by the contractor mid-stream, flouts eligibility criteria. It is also a fact that no subletted work has been completed in time and in spirit of the contract. Such actions by contractors cannot be accepted, being detrimental to interest of the Department/Govt.

2. The contractors adopt practice of entering into back to back contract, with another person or contractor, with fixed percentages to be received by the main contractor. No approval of Accepting officer as per condition 18 of IAFW 2249 General Conditions of Contract is obtained. This can be detected by the ground executives (GE & AGE) by general information on persons dealing with them and examination of authority under which they are acting on behalf of the main contractor. Uncontractual action of contractor needs to be addressed at the commencement stage itself and no leniency shall be allowed by the Accepting Officers. Immediately after notice thereof, action as per remedy available with Govt to terminate the contract under condition 53 (c) of GCC IAFW 2249 shall be taken. It shall be noted that executives in their interaction with contractor on a day to day basis/during their visits, will have sufficient base to establish whether the contractor himself is executing the work or not, and inaction in the matter shall invite action against the defaulting executives. The prime responsibility in his regard will rest with the Accepting Officers.

3. In some other cases, some contractors issue 'Power of Attorney' to a third party or another contractor, to carry out works on their behalf. This cannot remain undetected by the ground executives viz GE & AGE. Further, the nature and contents of POA itself are sufficient to arrive at conclusion that the work has been sublet. Once again, responsibility of such cases rests with Accepting Officers.



Contd. ...

4 The contents of condition 18 of GCC are very clear and so far, no case has come to light, where a contractor ever applied for subcontracting and after weighing all aspects of contract conditions, the Accepting Officer granted any approval. All such activities adopted by the contractor are therefore off the record and being accepted by the executives without any objection. This stance of the concerned executives, for which the Accepting Officer becomes responsible, is a matter of concern and viewed seriously by the E-in-C. In this connection attention is invited to DGW DO letter No 35482/SK/Per dt 01 Jan 2014 (copy enclosed) for strict compliance.

5 Even though provision exist in the Manual on Contracts & condition 18 of GCC, allowing the Accepting Officer to permit subletting/allotment of work by a contractor, these will with immediate not be exercised by the Accepting Officers. Thus, under no circumstances, subletting in any form, will be allowed. Even the Power of attorney shall not be accepted and allowed. This requirement will be clearly mentioned in the NIT also. In case of subletting as mentioned above or otherwise, following actions shall be taken on priority:-

(a) Commence action to terminate the contract, under condition 53 (c) of GCC IAFW 2249, after issue of SCN and examination of reply thereto.

(b) Disciplinary case against the enlisted contractor shall be initiated by issue of SCN by the Accepting Officer, with a copy to Registering Authority and the E-in-C's Br. In case of an un-enlisted firm, a copy of SCN shall be endorsed to all higher formations upto the E-in-C's Branch.


(c) The performance of contractor in WLR shall be endorsed with appropriate remarks of "No. Discp Action initiated for subletting".

(d) The contractor who is executing work under subletting or POA, shall also be endorsed with adverse remark and disciplinary action initiated against him. If unenlisted, all formations be accordingly informed up to E-in-C's Branch.

6. "Subletting" referred above includes all forms mentioned in condition 53 (c) of IAFW 2249.

7. The above procedure shall be followed with immediate effect.

8. This has the approval of E-in-C.


(ND Bhagatkar)
Jt DG (Contracts)
for Engineer-in-Chief

Copy to:-

QMG's Branch

Internal

ADGW (Army)

E2 (PPC)

E2 (Navy)

E2 (Air)

BK/

Ref No.MBAI/E-in-C/67/2014

Dated: 9.5.2014

E-in-C's Branch
Kashmir House Rajaji Marg
DHQ PO
New Delhi -110011

Sub: Sub-letting of works.

Dear Sir,

1. We understand that a policy letter has been issued by you for stopping the practice being followed by some builders of sub-letting the contract. Although the exact contents of this letter are not known, but we understand that as per this letter, a contractor cannot execute the work through a Power of Attorney Holder.
2. It is submitted that sub-letting the contract by giving a Power of Attorney to another contractor may not be desirable / permissible, but no blanket ban can be imposed for getting work done through a Power of Attorney. This is so because a contractor, who normally takes 2 to 3 works at different stations, cannot supervise each work individually. In fact many contracts require a Project Manager to be engaged by the contractor. In a situation like this, it would become necessary that someone is issued a Power of Attorney, so as to manage the day-to-day work of the contract.
3. Further, ours is evidently a traditional business, appointing blood relation as Power of Attorney to execute the works before they are trained enough to be added as Partners/Directors in the firm is also required so as to carry on with the legacy of our business in the best interest of competition, fair tendering and survival.

4. It is, therefore, requested that suitable clarifications may please be issued to all concerned that while giving Power of Attorney to another contractor is not permissible, there is no embargo in getting the work executed by giving Power of Attorney to the contractors engineer or relative.

Thanking you,

Yours faithfully,



(VINOD BEHL)
HONY.GEN.SECRETARY

Tele: 23019151

Dte of Contract Management
Military Engineer Services
Engineer-in-Chief's Branch
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg
New Delhi - 110 011

36073/MESBAI/GEN/335/E8

20 May 2014


Hony Gen Secretary
MES Builders Association of India (Regd)
Head Office 807-808, Sahyog 58
Nehru Place, New Delhi-110019

SUBLETTING OF WORKS

Dear Sir,

1. Reference your letter No. MBAI/E-in-C/67/2014/ dated 09 May 2014.
2. Contents of your letter have been perused. The Builders be apprised to refrain from subletting the contracts. The wordings of POA itself indicate entire power to third agency which is not acceptable. It cannot be considered as a good organisational quality of any firm not to visit/inspect their works site periodically even if there are number of works at different stations unless the work is sublet. This attitude shows lack of concern and raises doubt of subletting, and therefore should be curbed.
3. In view of the above no clarification is considered necessary.

Yours faithfully,


(Bhavesh Gupta)
Dir (Contracts)
For E-in-C

Ref No. MBAI/E-in-C/73 /2014

Dated: 30.5.2014

Dte of Contract Management
Military Engineer Services
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg
New Delhi -110011

Sub: Subletting of works.

Dear Sir,

Please refer to our letter No. MBAI/E-in-C/67/2014 dated 9.5.2014 and your letter No. 36073/MESBAI/GEN/335/E8 dated 20.5.2014.

We have already apprised the builders very categorically to refrain from subletting contracts and have also brought to their notice that the wordings of POA indicating entire power to third agency shall not be acceptable by the Department.

However, we reiterate our consent that it is an essential requirement to personally visit/inspect/manage all works, if any firm is executing number of works at different stations.

Please refer to para-3 of our above quoted letter vide which we had brought to your notice regarding appointment of blood relations as POA holders to enable them to join the family business at later stages, after gaining sufficient knowledge and experience, which shall be of immense benefit to both the firm and Department.

In case of Proprietorship firm POA issued by the proprietor is a necessary requirement for re-enlistment of firm with revised constitution in favour of legal heirs in case of sad demise of Sole Proprietor. Para 1.20 of Manual of Contracts of 2007 may please be referred in this matter.

It is, therefore, impressed upon your honour that in case suitable clarification on this aspect is issued, it shall be perfectly in order.

As is evident that the contracts are awarded/accepted by the President of India, who appoints executives to get the works executed on his behalf. Since it is not possible for the President to get the works executed personally. The same equitable facility if provided to the builders to enable their new generation to take over the works after proper grooming, shall not be detrimental or against the law of land.



It is suggested that instead of a General POA giving absolute power to third party, issue of Special POA for managing specific works by blood relations/ Project Manager be taken in cognizance please.

A favourable and early clarification is, therefore, solicited for which we shall remain obliged.

Thanking you,

Yours faithfully,



(VINOD BEHL)
HONY.GEN.SECRETARY