MEMO

From	Secretary for Development	***To***	Distribution
Ref.	( ) ***in*** DEVB(W) 510/70/03	***(Attn:***	***)***
Tel. No.	3509 8279	***Your Ref.***	
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Use of Retention Money and Performance Bond/Cash Security

The prevailing policy on how retention money and performance bond/cash security should be set out is spelt out in WBTC No. 10/97.

2. Upon review, we have updated Appendix A of the above Circular in respect of the amounts of retention money and performance bond/cash security (where applicable) to be adopted for various groups of contracts. The new requirements are given in the table below. Where necessary, procuring departments may adopt a higher amount of retention money and performance bond/cash security subject to a limit of not more than 5% of the estimated contract value.

Group Tender Limit	**Estimated Contract Value[1]**	**Retention[2] (% to be deducted from each payment)**	**Limit of Retention Money[2]**	**Amount of Performance Bond or Cash Security**
			(% of Estimated Contract Value)	
Group A	Up to 15% of Group A limit	2.5%	2.5%	2.5%
	Exceeding 15% of Group A limit and up to 30% of Group A limit	2%	2%	2%
	Exceeding 30% of Group A limit and up to Group A limit	1%	1%	1%
Group B	Exceeding Group A limit and up to Group B limit	1%	1%	1%
Group C	Exceeding Group B limit	1%	1%	1%

Remark: For works contracts engaging specialist contractors, the amounts of retention money and performance bond/cash security to be adopted shall refer to the estimated contract value under the corresponding group tender limits mentioned above.

[1] For NEC contracts, "Estimated Contract Value" refers to the forecast total of the Prices.

[2] For NEC contracts, "Retention" and "Limit of Retention Money" refer to "*retention percentage*" and "*limit of amount retained*" respectively.

3. The above update shall be adopted for works contracts for which tenders are to be invited on or after 24 August 2021. For tenders invited/to be invited before this date, procuring departments may adopt the above update where appropriate.

4. Please bring this memo to the attention of the project officers who are responsible for procurement of works contracts.

5. By copy, we would be grateful if CEDD, ArchSD and EMSD could arrange updating the relevant parts of the respective PAHs under their ambit.

6. If there are any enquiries, please feel free to contact Mr Jim Mo, AS(WP4)9, on tel. no. 3509 7301.

(Y K HO)
for Secretary for Development

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SE/QM&S, CEDD	(for updating PAH for Civil Engineering Works)
PM347, ArchSD	(for updating PAH for Building Works)
CA2, EMSD	(for updating PAH for E&M Engineering Works)

Internal

CAS(W)7, AS(WP4)2, AS(WP4)3, AS(WP4)8 and TS

Ref : WB(W) 250/32/31
Group : 3,5

29 August 1997

Works Bureau Technical Circular No. 10/97

Use of Performance Bonds Security and Retention Moneys and Standard Form of Bond

This WBTC supersedes WBTC No. 19/92, 19/92A and 19/92B on the use of performance bonds. LWBTC Nos. 20/85 on conditions of tender and 21/85 on acceptance of tender cross refer to LWBTC No. 19/85, are now deleted and incorporated into this circular. The updated financial limits for various groups of approved contractors have been taken into account in Appendix A of this WBTC. Appendix A shall only be used where appropriate and in accordance with the Policy outlined below.

Background

The use of performance bonds has been exhaustively debated. At the Works Group Directors' Meeting on 8 May 1991 the Directors approved a general curtailment of the use of performance bonds.

Policy

2. It is still the policy that in tenders for contracts, including tenders for term contracts (except tenders for ACP contracts where special bonding rules apply), performance bonds are no longer to be included unless the following circumstances exist :

(a) where the work is funded in whole or in part by an outside body (e.g. Provisional Urban Council), performance bonds shall only be deleted with the express written agreement of the outside body who must have been made aware of the implications, on a contract by contract basis. Vote Controllers or their delegates shall make their own detailed arrangements with their clients;

(b) for special contracts such as those where, due to prequalification, pre-selection or any other appropriate reason, at least one of the tenderers is not on the list of Approved Contractors for Public Works. The performance bond may be deleted in these circumstances at the discretion of the Vote Controller or his delegate where there is no particular need for it i.e. where Government has no higher risk than for general works contracts which no longer require the bond; or

(c) where for any special reason, the Vote Controller or his delegate considers the risk particularly high compared to other general works contracts not including a bond e.g. contracts that are very large and/or time critical, and where the contract conditions impose a substantially higher degree of risk than normal on the Contractor.

3. The latest version of the Form of Performance Bond (the Bond) is attached as Appendix B. The Bond is based on the assumption that the bondsman (i.e. the bank or insurance company approved by the Employer under GCC Clause 12) is a company incorporated in Hong Kong. Where an overseas company is proposed to be the bondsman, advice must be sought from the Department of Justice as regards the need for additional provisions in the Bond (e.g. choice of law clause, jurisdiction clause, appointment of local agent for service of process clause and immunity waiver clause) and if required, the wording of such provisions.

4. Where no bond or cash security deposit is required, care must be taken to delete from the Specimen Form of Tender (FT) in Appendix 5.3 of the Project Administration Handbook for Civil Engineering Works Volume II Chapter 5, the following :

(a) para 2 on bond and cash security;

(b) reference to 'Amount of bond or cash security (if required)' in the Appendix to Form of Tender-P1; and

(c) the last 5 lines of the Appendix to Form of Tender-P3.

5. Where a bond or cash security deposit is required, the following Special Condition of Contract should be adopted to highlight such requirement :

"S.C.C. [ ]

(1) The Contractor is required to [obtain the guarantee/provide the cash security deposit]* referred to in Clause 12 of the General Conditions of Contract.

(2) The Contractor shall provide the requisite [guarantee/cash security deposit]* to the Employer within [ ] days of the acceptance of the Tender.

(3) Notwithstanding any other provision of the Contract :

(a) submission by the Contractor of the requisite [guarantee/cash security deposit]* in accordance with the foregoing provisions of this Clause shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract; and

(b) failure by the Contractor to provide the requisite [guarantee/cash security deposit]* in accordance with the foregoing provisions of this Clause shall entitle the Employer either to suspend the Works or to terminate the Contract forthwith by notice in writing to that effect, notwithstanding that the contractor may have been permitted to proceed with the Works, and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such suspension or termination.

* Delete whichever is inappropriate."

(C G Ko)
Deputy Secretary (Works Policy)