



**LAGOS STATE GOVERNMENT  
LAGOS STATE PUBLIC PROCUREMENT  
AGENCY (PPA)**

**STANDARD BIDDING DOCUMENTS**

**Procurement of Large Works**

**PUBLIC PROCUREMENT IN LAGOS STATE**

**APRIL 2013**

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## INTRODUCTION

These Standard Bidding Documents for Works (SBDW) have been prepared by the Lagos State Public Procurement Agency (PPA) for use by MDAs in the procurement of admeasurement (unit price or rate) type of works contracts through international competitive bidding. The procedures and practices presented in this document have been developed through broad international experience. They are mandatory for use in works contracts financed in whole or in part by the Lagos State Government, hereinafter called “the LSG”), which are estimated to cost more than NGN100million equivalent (including contingency allowance) unless the Agency agrees to the use of other Agency Standard Bidding Documents on a case-by-case basis.

In order to simplify the preparation of bidding documents for each procurement, the SBDW groups the provisions that shall remain unchanged in Section II, Instructions to Bidders, and in Section IV, Part I—General Conditions of Contract. Data and provisions specific to each procurement and contract shall be included in Section III, Bidding Data, in Section V, Part II—Conditions of Particular Application, and in the Appendix to Bid included in Section VII. The documents also require Technical Specifications (Section VI), Drawings (Section X), Bill of Quantities (Section VIII), and other materials, which should be incorporated in the appropriate sections. In addition, sample forms to be used are provided where necessary.

This SBDW has been prepared for bidding when prequalification has taken place. The process of prequalification shall follow the procedure indicated in *Standard Prequalification Documents: Procurement of Works*, issued by the Agency. Prequalification shall be followed for all major works. Exceptionally, in the absence of prequalification, post qualification shall be followed, with prior agreement by the Agency. Post qualification procedures are covered in Section XII.

Care should be taken to check the relevance of the SBDW against the requirements of the specifics works to be procured. The following general directions should be observed when using the document:

- (a) Explanatory text and notes are presented in a sans serif typeface such as that used in this line and in the body of this Introduction. All the notes, except those applying to forms to be filled in by bidders, are intended only as information for the person drafting the bidding documents and should not be included in the final documents.
- (b) When parameters, options, instructions, and/or explanatory notes appear directly within the standard text, they are enclosed with square brackets, italicized, and the key parameter bolded. For example:

“The Warranty Period is [ insert: **number** ] months from the date of the Operational Acceptance of the System.”

- (c) Specific details, such as the *name of the MDA* or *address for bid submission*, should be furnished in the space provided in the Bidding Data, and in the

Conditions of Particular Application or Appendix to Bid. The final document should contain neither blank spaces nor options.

- (d) Amendments, if any, to the Instructions to Bidders and to the General Conditions of Contract, can only be made through the Bidding Data and Conditions of Particular Application, respectively.
- (e) Except where indicated as mandatory, clauses included in the Conditions of Particular Application are illustrative of the provisions that should be drafted by the MDA for each procurement.

These bidding documents are not suitable for lump sum contracts without substantial changes to the method of payment and price adjustment, and to the Bill of Quantities, Schedules of Activities, and so forth.

## **SECTION I. INVITATION FOR BIDS (IFB)**

### **Notes on the Form of Invitation for Bids**

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The Invitation for Bids for contracts, subject to prequalification, is sent only to firms determined by the MDA to be qualified in accordance with the Agency's prequalification procedure. This procedure must be reviewed and commented on by the Agency if the potential contract is to be eligible for LSG funds.

Ideally, the Letter of Invitation for Bids is sent to the qualified bidders at the time that the prequalification results are announced.

For major works, prequalification shall be used. If, exceptionally, prequalification is not used, refer to Section XII for the appropriate Invitation for Bids and for other changes to the document.

## Form of Invitation for Bids

*[letterhead paper of the MDA]*

\_\_\_\_\_ *[date]*

To: *[name of Contractor]*  
*[address]*

Reference: *[Insert Contract No.]*

Contract Name, and Identification No. \_\_\_\_\_ / \_\_\_\_\_

Dear Sirs:

We hereby inform you that you are prequalified for bidding for the above cited contract. A list of prequalified and conditionally prequalified Applicants is attached to this invitation.

On the basis of information submitted in your application, you would *[not]* (*insert if appropriate*) appear eligible for application of the domestic bidder price preference in bid evaluation. Eligibility is subject to confirmation at bid evaluation.

We now invite you and other prequalified Applicants to submit sealed bids for the execution and completion of the cited contract.

You may obtain further information from, and inspect and acquire the bidding documents at, our offices at *[mailing address, street address, and telephone numbers]*.

A complete set of bidding documents may be purchased by you at the above office, on or after *[time and date]* and upon payment of a nonrefundable fee of *[insert amount and currency]*.

All bids must be accompanied by a security in the form and amount specified in the bidding documents, and must be delivered to *[address and exact location]* at or before *[time and date]*. Bids will be opened immediately thereafter in the presence of bidders' representatives who choose to attend.

Please confirm receipt of this letter immediately in writing. If you do not intend to bid, we would appreciate being so notified also in writing at your earliest opportunity.

Yours truly,

Authorized signature \_\_\_\_\_  
 Name and title \_\_\_\_\_  
 MDA \_\_\_\_\_



## SECTION II. INSTRUCTIONS TO BIDDERS

### Notes on the Instructions to Bidders

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Section II provides the information necessary for bidders to prepare responsive bids in accordance with the requirements of the MDA. It also gives information on bid submission, opening, and evaluation, and on the award of Contract.

**Section II includes provisions that are to be used unchanged. Section III, Bidding Data, consists of provisions that supplement, amend, or specify information or changes to Section II that are specific to each procurement.**

Matters governing the performance of the Contractor under the Contract, payments under the Contract, or matters affecting the risks, rights, or obligations of the parties under the Contract are not included in this section, but rather in the General Conditions of Contract, Particular Conditions of Contract, and/or Appendix to Bid. If duplication of a subject is inevitable in the different sections of the documents, the MDA should exercise care to avoid contradiction or conflict between clauses dealing with the same topic.

These Instructions to Bidders will not be part of the Contract.

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## Instructions to Bidders

### A. General

- 1. Scope of Bid**
  - 1.1 The Ministry, Department and Agency, as defined in the Bidding Data and Appendix to Bid, hereinafter “the MDA,” wishes to receive bids for the construction of Works, as described in Sections V, VI, VII, VIII, and X and summarized in the Bidding Data, hereinafter referred to as “the Works.”
  - 1.2 The successful bidder will be expected to complete the Works within the period stated in the Bidding Data and Appendix to Bid from the date of commencement of the Works.
  - 1.3 Throughout these bidding documents, the terms “bid” and “tender” and their derivatives (“bidder/tenderer”, “bid/tendered”, “bidding/tendering”, etc.) are synonymous, and *day* means calendar day. Singular also means plural.
- 2. Source of Funds**
  - 2.1 The MDA named in the Bidding Data has budgetary allocation (hereinafter called “fund”) from the Lagos State Government (hereinafter interchangeably called “the LSG”) in amount indicated in the Bidding Data towards the cost of the Project specified in the Bidding Data, and the MDA intends to apply a part of the proceeds of this fund to eligible payments under the Contract for which these bidding documents are issued.
- 3. Eligible Bidders**
  - 3.1 This invitation to bid is open to any bidder (including all members of a joint venture and all subcontractors of a bidder) meeting all four of the following requirements:
    - (a) A bidder shall be from an eligible source country as defined under the Procurement *Guidelines* (hereinafter referred to as the Guidelines).
    - (b) A bidder shall not be affiliated with a firm or entity
      - (i) that has provided consulting services related to the Works to the MDA during the preparatory stages of the Works or of the Project of which the Works form a part, or
      - (ii) that has been hired (or is proposed to be hired) by the MDA as Engineer for the contract.

- (c) A bidder shall be prequalified for the contract as notified by the MDA.
    - (d) A bidder shall not be under a declaration of ineligibility for corrupt or fraudulent practices issued by the Agency in accordance with Sub-Clause 39.1 (c).
  - 3.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the MDA as the MDA shall reasonably request.
  - 3.3 Majority publicly owned enterprises from the country may be eligible to qualify if, in addition to meeting all the above requirements, they are also legally and financially autonomous, and are not a dependent agency government.
- 4. Eligible Materials, Plant, Supplies, Equipment, and Services**
  - 4.1 The materials, Plant or Contractor's Equipment, other supplies, and services to be supplied under the Contract, shall have their origin in eligible source countries, defined under the Guidelines, and all expenditures made under the Contract will be limited to such materials, Plant or Contractor's Equipment, other supplies, and services.
    - 4.2 For purposes of Sub-Clause 4.1 above, "origin" means the place where the materials, Plant, equipment, and other supplies are mined, grown, produced, or manufactured, and from which the services are supplied.
- 5. Qualification of the Bidder**
  - 5.1 Bidders shall, as part of their bid:
    - (a) submit a written power of attorney authorizing the signatory of the bid to commit the bidder; and
    - (b) update any information submitted with their applications for prequalification, which has changed, and update in any case the information indicated in the Bidding Data, and continue to meet the minimum threshold criteria set out in the prequalification documents.

As a minimum, bidders shall update the following information:

  - (a) evidence of access to lines of credit and availability of other financial resources;
  - (b) financial predictions for the current year and the two following years, including the effect of known commitments;

- (c) work commitments acquired since prequalification;
  - (d) current litigation information; and
  - (e) availability of critical equipment.
- 5.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:
- (a) the bid shall include all the information listed in Sub-Clause 5.1 above;
  - (b) the bid security, the bid, and in case of a successful bid, the Agreement, shall be signed so as to be legally binding on all partners;
  - (c) one of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
  - (d) the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
  - (e) all partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the contract terms, and a statement to this effect shall be included in the authorization mentioned under (c) above, as well as in the bid and in the Agreement (in case of a successful bid); and
  - (f) a copy of the Joint Venture Agreement entered into by all partners shall be submitted with the bid. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.
- 5.3 Bidders shall also submit proposals of work methods and schedule in sufficient detail to demonstrate the adequacy of the bidders' proposals to meet the technical specifications and the completion time referred to in Sub-Clause 1.2 above.
- 5.4 Domestic bidders, individually or in joint ventures, applying for eligibility for a 7.5 percent margin of preference in bid evaluation shall supply all information required to satisfy the

additional criteria for eligibility as described in Clause 32.

- 6. One Bid per Bidder**
- 6.1 A firm/Company shall submit only one bid in the same bidding process, either individually as a bidder or as a partner in a joint venture. No firm/Company can be a subcontractor while submitting a bid individually or as a partner of a joint venture in the same bidding process. A firm/Company, if acting in the capacity of subcontractor in any bid, may participate in more than one bid, but only in that capacity. A bidder who submits or participates in more than one bid will cause all the proposals in which the bidder has participated to be disqualified.
- 7. Cost of Bidding**
- 7.1 The bidder shall bear all costs associated with the preparation and submission of its bid, and the MDA will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 8. Site Visit**
- 8.1 The bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the bidder's own expense.
- 8.2 The bidder and any of its personnel or agents will be granted permission by the MDA to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the bidder, its personnel, and agents will release and indemnify the MDA and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 8.3 The MDA may conduct a Site visit concurrently with the pre-bid meeting referred to in Clause 19.

## **B. Bidding Documents**

- 9. Content of Bidding Documents**
- 9.1 The bidding documents are those stated below and should be read in conjunction with any Addenda issued in accordance with Clause 11:
- |              |                                       |
|--------------|---------------------------------------|
| Section I.   | Invitation for Bids                   |
| Section II.  | Instructions to Bidders               |
| Section III. | Bidding Data                          |
| Section IV.  | Part I—General Conditions of Contract |

Section V.	Part II—Conditions of Particular Application
Section VI.	Technical Specifications
Section VII.	Form of Bid, Appendix to Bid, and Bid Security
Section VIII.	Bill of Quantities/BEME
Section IX.	Form of Agreement, Forms of Performance Security, and Bank guarantee for Advance Payment
Section X.	Drawings
Section XI.	Explanatory Notes
Section XII.	Post qualification
Section XIII.	Disputes Settlement Procedure

- 10. Clarification of Bidding Documents**
- 10.1 A prospective bidder requiring any clarification of the bidding documents may notify the MDA in writing at the MDA's address indicated in the Bidding Data. The MDA will respond to any request for clarification that he receives earlier than 28 days prior to the deadline for submission of bids. Copies of the MDA's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry but without identifying its source.



- 11. Amendment of Bidding Documents**
- 11.1 At any time prior to the deadline for submission of bids, the MDA may amend the bidding documents by issuing Addenda.
- 11.2 Any Addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 9.1 and shall be communicated in writing to all purchasers of the bidding documents. Prospective bidders shall promptly acknowledge receipt of each Addendum by cable to the MDA.
- 11.3 To give prospective bidders reasonable time in which to take an Addendum into account in preparing their bids, the MDA shall extend as necessary the deadline for submission of bids, in accordance with Clause 22.

### **C. Preparation of Bids**

- 12. Language of Bid**
- 12.1 The bid, and all correspondence and documents related to the bid exchanged by the bidder and the MDA, shall be written in the bid language stipulated in the Bidding Data and Conditions of Particular Application.
- 13. Documents Comprising the Bid**
- 13.1 The bid submitted by the bidder shall comprise the following: duly filled-in Form of Bid and Appendix to Bid, Bid Security, priced Bill of Quantities, alternative offers where invited, and any information or other materials required to be completed and submitted by bidders in accordance with these Instructions to Bidders. The documents listed under Sections VII and VIII shall be filled in without exception, subject to extensions thereof in the same format and to the provisions of Sub-Clause 17.2 regarding the alternative forms of bid security.
- 13.2 If so indicated in the Bidding Data, bidders bidding for this contract, together with other contracts to form a package, will so indicate in the bid, together with any discounts offered for the award of more than one contract.
- 14. Bid Prices**
- 14.1 Unless stated otherwise in the bidding documents, the Contract shall be for the whole Works as described in Sub-Clause 1.1, based on the unit rates and prices in the Bill of Quantities/BEME submitted by the bidder.
- 14.2 The bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME). Items against which no rate or price is entered by/BEME the bidder will not be paid for by the MDA when executed and shall be deemed covered by the

rates for other items and prices in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).

- 14.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the bidder.
- 14.4 Unless otherwise provided in the Bidding Data and Conditions of Particular Application, the rates and prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of Clause 70 of the Conditions of Contract. The bidder shall furnish the indices and weightings for the price adjustment formulae in the Appendix to Bid, and shall submit with its bid such other supporting information as required under Clause 70 of the Conditions of Contract. The MDA may require the bidder to justify its proposed weightings.

**15. Currencies of Bid and Payment**

**Alternative A: Bidders quote entirely in local currency**

- 15.1 The currency(ies) of the bid shall follow Alternative A or B, as specified in the Bidding Data.
- 15.2a. The unit rates and the prices shall be quoted by the bidder entirely in the currency of the MDA's country specified in the Bidding Data and Conditions of Particular Application. A bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the MDA's country (referred to as "the foreign currency requirements") shall indicate in the Appendix to Bid the percentage(s) of the Bid Price (excluding Provisional Sums) needed by him for the payment of such foreign currency requirements, limited to no more than three foreign currencies of any member country of the Agency.
- 15.2b. The rates of exchange to be used by the bidder in arriving at the local currency equivalent and the percentage(s) mentioned in Sub-Clause 15.2 above shall be specified by the bidder in the Appendix to Bid, and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful bidder.
- 15.2c. Bidders shall indicate their expected foreign currency requirements in the Appendix to Bid.
- 15.2d. Bidders may be required by the MDA to clarify their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Appendix to Bid are reasonable and responsive to Sub-Clause 15.2, in which case a detailed breakdown of its foreign currency

requirements shall be provided by the bidder.

15.2e. During the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the MDA and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 72.4 of the Conditions of Particular Application. Any such adjustment shall be effected by comparing the percentages quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

**Alternative B:  
Bidders quote  
in local and  
foreign  
currencies**

15.2f. The unit rates and prices shall be quoted by the bidder separately in the following currencies:

- (a) for those inputs to the Works that the bidder expects to supply from within country, in the currency specified in the Bidding Data and Conditions of Particular Application; and
- (b) for those inputs to the Works that the bidder expects to supply from outside the country (referred to as "the foreign currency requirements") in up to any of the three currencies specified in the Bidding Data.

15.3 Bidders shall indicate their expected foreign currency requirements in the Appendix to Bid.

15.4 Bidders may be required by the MDA to clarify their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Appendix to Bid are reasonable and responsive to Sub-Clause 15.2, in which case a detailed breakdown of its foreign currency requirements shall be provided by the bidder.

15.5 During the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the MDA and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 72.4 of the Conditions of Particular Application. Any such adjustment shall be effected by comparing the amounts quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

**16. Bid Validity**

16.1 Bids shall remain valid for the period stipulated in the Bidding Data after the deadline for bid submission as specified in Clause

22.

16.2 In exceptional circumstances, prior to expiry of the original bid validity period, the MDA may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by cable. A bidder may refuse the request without forfeiting its bid security. A bidder agreeing to the request will not be required or permitted to modify its bid, but will be required to extend the validity of its bid security for the period of the extension and in compliance with Clause 17 in all respects.

16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended beyond eight weeks, the amounts payable in local and foreign currency to the bidder selected for award shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the Bidding Data or in the request for extension, for the period of delay beyond eight weeks after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the bid prices without taking into consideration the above correction.

## **17. Bid Security**

17.1 The bidder shall furnish, as part of its bid, a bid security in the amount stipulated in the Bidding Data in the currency of the country, or the equivalent amount in a freely convertible currency.

17.2 The bid security shall:

- (a) at the bidder's option, be in the form of either a certified cheque, or a Bank guarantee from a Banking institution, or a bond issued by an insurance or bonding institution;
- (b) be issued by a reputable institution selected by the bidder and acceptable to the Agency;
- (c) be substantially in accordance with one of the forms of bid security included in Section VII or other form approved by the MDA prior to bid submission;
- (d) be payable promptly upon written demand by the MDA in case any of the conditions listed in Sub-Clause 17.7 are invoked;
- (e) be submitted in its original form; copies will not be accepted;
- (f) remain valid for a period of 28 days beyond the original validity

period of bids, or beyond any period of extension subsequently requested under Sub-Clause 16.2.

17.3 The bid security of a joint venture shall be issued so as to commit fully all partners to the proposed joint venture.

17.4 Any bid not accompanied by an acceptable bid security shall be rejected by the MDA as nonresponsive.

17.5 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the original period, or any subsequently extended period, of bid validity.

17.6 The bid security of the successful bidder will be returned when the bidder has signed the Agreement and furnished the required performance security.

17.7 The bid security may be forfeited

- (a) if the bidder withdraws its bid, except as provided in Sub-Clause 24.2;
- (b) if the bidder does not accept the correction of its Bid Price, pursuant to Sub-Clause 29.2; or
- (c) in the case of a successful bidder, if he fails within the specified time limit to
  - (i) sign the Agreement, or
  - (ii) furnish the required performance security.

## **18. Alternative Proposals by Bidders**

18.1 When alternative times for completion are explicitly invited, a statement to that effect will be included in the Bidding Data, as will the method of evaluating different times for completion.

18.2 Except as provided under Sub-Clause 18.3 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first price the MDA's design as described in the bidding documents and shall further provide all information necessary for a complete evaluation of the alternative by the MDA, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated bidder conforming to the basic technical requirements shall be considered by the MDA.

18.3 When bidders are permitted to submit alternative technical solutions for specified parts of the Works, such parts shall be described in Section VI, Technical Specifications.

**19. Pre-Bid Meeting**

19.1 The bidder's designated representative is invited to attend a pre-bid meeting, which, if convened, will take place at the venue and time stipulated in the Bidding Data.

19.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

19.3 The bidder is requested, as far as possible, to submit any questions in writing or by cable, to reach the MDA not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following sub-clause.

19.4 Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the bidding documents. Any modification of the bidding documents listed in Sub-Clause 9.1 that may become necessary as a result of the pre-bid meeting shall be made by the MDA exclusively through the issue of an Addendum pursuant to Clause 11 and not through the minutes of the pre-bid meeting.

19.5 Non attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

**20. Format and Signing of Bid**

20.1 The bidder shall prepare one original of the documents comprising the bid as described in Clause 13 of these Instructions to Bidders clearly marked "original." In addition, the bidder shall submit copies of the bid, in the number specified in the Bidding Data and clearly marked "copies." In the event of discrepancy between them, the original shall prevail.

20.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Paragraphs 5.1 (a) or 5.2 (c), as the case may be. All pages of the bid where entries or amendments have been made shall be initialed by the person or persons signing the bid.

20.3 The bid shall contain no alterations, omissions, or additions, unless such corrections are initialed by the person or persons signing the bid.

20.4 The bidder shall furnish information as described in paragraph 7 of the Form of Bid on commissions, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the bidder is awarded the Contract.

#### **D. Submission of Bids**

##### **21. Sealing and Marking of Bids**

21.1 The bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as “original” and “copies.” The envelopes shall then be sealed in an outer envelope.

21.2 The inner and outer envelopes shall

- (a) be addressed to the MDA at the address provided in the Bidding Data;
- (b) bear the name and identification number of the Contract as defined in the Bidding Data; and
- (c) provide a warning not to open before the time and date for bid opening, as specified in the Bidding Data.

21.3 In addition to the identification required in Sub-Clause 21.2, the inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to Clause 23, and for matching purposes under Clause 24.

21.4 If the outer envelope is not sealed and marked as above, the MDA will assume no responsibility for the misplacement or premature opening of the bid. If the outer envelope discloses the bidder’s identity, the MDA will not guarantee the anonymity of the bid submission, but this shall not constitute grounds for rejection of the bid.

##### **22. Deadline for Submission of Bids**

22.1 Bids must be received by the MDA at the address specified in Sub-Clause 21.2 no later than the time and date stipulated in the Bidding Data.

22.2 The MDA may, in exceptional circumstances and at its discretion, extend the deadline for submission of bids by issuing an Addendum in accordance with Clause 11, in which case all

rights and obligations of the MDA and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

**23. Late Bids**

23.1 Any bid received by the MDA after the deadline for submission of bids prescribed in Clause 22 will be returned unopened to the bidder.

**24. Modification and Withdrawal of Bids**

24.1 The bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by the MDA prior to the deadline for submission of bids.

24.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of Clause 21, with the outer and inner envelopes additionally marked "modification" or "withdrawal," as appropriate.

24.3 No bid may be modified by the bidder after the deadline for submission of bids, except in accordance with Sub-Clauses 24.1 and 29.2.

24.4 Except as provided in Sub-Clause 24.1, withdrawal of a bid during the interval between the deadline for submission of bids and expiration of the period of bid validity specified in Clause 16 may result in the forfeiture of the bid security pursuant to Sub-Clause 17.6.

**E. Bid Opening and Evaluation****25. Bid Opening**

25.1 The MDA will open the bids, including withdrawals and modifications made pursuant to Clause 24, in the presence of bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the Bidding Data. The bidders' representatives who are present shall sign a register evidencing their attendance.

25.2 Envelopes marked "WITHDRAWAL" shall be opened first, and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 24 shall not be opened. Subsequently, all envelopes marked "MODIFICATION" shall be opened and the submissions therein read out in appropriate detail.



- 25.3 The bidders' names, the Bid Prices, including any alternative Bid Price or deviation, any discounts, bid modifications and withdrawals, the presence (or absence) and amount of bid security, and any such other details as the MDA may consider appropriate, will be announced by the MDA at the opening. No bid shall be rejected at bid opening except for late bids pursuant to Clause 23.
- 25.4 The MDA shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 25.3.
- 25.5 Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.
- 26. Process to Be Confidential**
- 26.1 Information relating to the examination, clarification, evaluation, and comparison of bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the MDA's processing of bids or award decisions may result in the rejection of the bidder's bid.
- 27. Clarification of Bids and Contacting the MDA**
- 27.1 To assist in the examination, evaluation, and comparison of bids, the MDA may, at its discretion, ask any bidder for clarification of its bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the MDA in the evaluation of the bids in accordance with Clause 29.
- 27.2 From the time of bid opening to the time of Contract award, if any bidder wishes to contact the MDA on any matter related to the bid, it should do so in writing.
- 27.3 Any effort by the bidder to influence the MDA in the MDA's bid evaluation, bid comparison, or Contract award decisions may result in the rejection of the bidder's bid.
- 28. Examination of Bids and Determination of**
- 28.1 Prior to the detailed evaluation of bids, the MDA will determine whether each bid (a) meets the eligibility criteria of the Agency; (b) has been properly signed; (c) is accompanied by the required securities; (d) is substantially responsive to the requirements of the bidding documents; and (e) provides any clarification and/or

**Responsiveness** substantiation that the MDA may require to determine responsiveness pursuant to Sub-Clause 28.2. Furthermore, the bidder shall, if required, provide substantiation that the MDA may require, pursuant to Sub-Clause 15.5.

28.2 A substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the bidding documents without material deviation or reservation. A material deviation or reservation is one (a) that affects in any substantial way the scope, quality, or performance of the Works; (b) that limits in any substantial way, inconsistent with the bidding documents, the MDA's rights or the bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

28.3 If a bid is not substantially responsive, it will be rejected by the MDA and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

**29. Correction of Errors**

29.1 Bids determined to be substantially responsive will be checked by the MDA for any arithmetic errors. Errors will be corrected by the MDA as follows:

- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the MDA there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected.

29.2 The amount stated in the bid will be adjusted by the MDA in accordance with the above procedure for the correction of errors and, with the concurrence of the bidder, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, its bid will be rejected, and the bid security may be forfeited in accordance with Paragraph 17.2 (b).

**30. Conversion to Single Currency for Comparison of Bids**

**Option 1: To be used with Clause 15, Alternative A**

30.1 For comparison of bids, the Bid Price, corrected pursuant to Clause 29, shall first be broken down into the respective amounts payable in various currencies by using the exchange rates specified by the bidder in accordance with Sub-Clause 15.3.

30.2 In the second step, the MDA will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Daywork where priced competitively):

- (a) the currency of the country at the selling rates established for similar transactions by the authority specified in the Bidding Data on the date stipulated in the Bidding Data;

**Option 2: To be used with Clause 15, Alternative B**

30.1 The MDA will convert the amounts in various currencies in which the Bid Price, corrected pursuant to Clause 29, is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:

- (a) the currency of the country at the selling rates established for similar transactions by the authority specified in the Bidding Data on the date stipulated in the Bidding Data;

**31. Evaluation and Comparison of Bids**

31.1 The MDA will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 28.

31.2 In evaluating the bids, the MDA will determine for each bid the Evaluated Bid Price by adjusting the Bid Price as follows:

- (a) making any correction for errors pursuant to Clause 29;
- (b) excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), but including Day work, where priced competitively;
- (c) converting the amount resulting from applying (a) to (b) above and (f) below, if relevant, to a single currency in accordance with Clause 30;

- (d) making an appropriate adjustment on sound technical and/or financial grounds for any other quantifiable acceptable variations, deviations, or alternative offers;
- (e) making an allowance for varying times for completion offered by bidders, if permitted in the Bidding Data and in the manner prescribed therein; and
- (f) applying any discounts offered by the bidder for the award of more than one contract, if bidding for this Contract is being done concurrently with other Contracts (Sub-Clause 13.2).

31.3 The MDA reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, alternative offers, and other factors that are in excess of the requirements of the bidding documents shall not be taken into account in bid evaluation.

31.4 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

31.5 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in relation to the Engineer's estimate of the items of work to be performed under the Contract, the MDA may require the bidder to produce detailed price analyses for any or all items of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the MDA may require that the amount of the performance security set forth in Clause 37 be increased at the expense of the bidder to a level sufficient to protect the MDA against financial loss in the event of default of the successful bidder under the Contract.

**32. Preference for Domestic Bidders**

32.1 If so indicated in the Bidding Data, domestic bidders may receive a margin of preference in bid evaluation for which this clause shall apply.

32.2 Domestic bidders shall provide all evidence necessary to establish that they meet the following criteria to be eligible for a 7.5 percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference.

32.3 A domestic bidder is one that meets the following criteria:

- (a) for an individual firm/Company:
  - (i) is registered in the country;
  - (ii) has more than 50 percent ownership by nationals of the country of the MDA;
  - (iii) does not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign contractors.
- (b) for a joint venture (JV) of domestic firm/Companies:
  - (i) individual member firm/company shall satisfy Sub-Paragraphs 32.3 (a) (i) and (a) (ii) above;
  - (ii) the JV shall be registered in the country of the MDA;
  - (iii) the JV shall not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign firms/companies.

32.4 The following procedure will be used to apply the margin of preference:

- (a) After bids have been converted to a single currency in accordance with the provisions of Paragraphs 31.2 (c) above, responsive bids will be classified into the following groups:
  - (i) Group A: bids offered by domestic bidders and joint ventures meeting the criteria set out in the above Sub-Clause 32.3; and
  - 2
  - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7.5 percent of the evaluated Bid Price determined in accordance with the provisions of Paragraphs 31.2 (a), (b), (c), and, where applicable, (f), will be added to all bids classified in Group B.

32.5 Alternative offers, where solicited or permitted, will be evaluated separately, in accordance with the provisions of Clause 18, and

shall be subject to the margin of preference in accordance with Sub-Clause 32.4.

## **F. Award of Contract**

### **33. Award**

33.1 Subject to Clause 34, the MDA will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest Evaluated Bid Price pursuant to Clauses 31 and 32, provided that such bidder has been determined to be (a) eligible in accordance with the provisions of Sub-Clause 3.1; and (b) qualified in accordance with the provisions of Clause 5.

33.2 If, pursuant to Sub-Clause 13.2, this Contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this Contract in conjunction with other contracts to be awarded concurrently, taking into account any discounts offered by the bidders for the award of more than one contract.

### **34. MDA’s Right to Accept Any Bid and to Reject Any or All Bids**

34.1 The MDA reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the MDA’s action.

### **35. Notification of Award**

35.1 Prior to expiration of the period of bid validity prescribed by the MDA, the MDA will notify the successful bidder in writing that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the “Letter of notification of award”) shall specify the sum that the MDA will pay the Contractor in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called “the Contract Price”).

35.2 The notification of award will constitute the formation of the Contract.

35.3 Upon the successful bidder’s furnishing of the performance security pursuant to ITB Clause 37, the MDA will promptly notify the name of the winning bidder to each unsuccessful bidder and will discharge the bid security of the unsuccessful bidders, pursuant to ITB Clause 17.

35.4 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the MDA. The MDA will promptly respond in writing to the unsuccessful bidder.

**36. Signing of Agreement**

36.1 At the same time that the MDA notifies the successful bidder that its bid has been accepted, the MDA will send the bidder the Agreement in the form provided in the bidding documents, incorporating all agreements between the parties.

36.2 Within 14 days of receipt of the Agreement, the successful bidder shall sign the Agreement and return it to the MDA duly stamped, together with the required performance security.

36.3 Upon fulfillment of Sub-Clause 36.2, the MDA will promptly notify the other bidders that their bids have been unsuccessful and their bid security will be returned as promptly as possible, in accordance with Sub-Clause 17.5.

**37. Performance Security**

37.1 Within 14 days of receipt of the Letter of notification of award from the MDA, the successful bidder shall furnish to the MDA a performance security in the form stipulated in the Bidding Data and the Conditions of Contract. The form of performance security provided in Section IX of the bidding documents may be used or some other form acceptable to the MDA.

37.2 If it is stipulated in the Bidding Data that the performance security is to be provided by the successful bidder in the form of a Bank guarantee, it shall be issued either (a) at the bidder's option, by a Bank located in the country of the MDA or by a foreign Bank through a correspondent Bank located in the country, or (b) with the prior agreement of the MDA directly by a foreign Bank acceptable to the MDA.

37.3 If it is stipulated in the Bidding Data that the performance security may also be provided by the successful bidder in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful bidder to be acceptable to the MDA.

37.4 Failure of the successful bidder to comply with the requirements of Clauses 36 or 37 shall constitute a breach of Contract, cause for annulment of the award, forfeiture of the bid security, and any such other remedy the MDA may take under the Contract, and the MDA may resort to awarding the Contract to the next ranked bidder.

**38. Disputes Review Method**

38.1 The disputes review method (i.e., the Disputes Review Board or the Disputes Review Expert) is indicated in the Bidding Data. The MDA and the successful bidder will select Disputes Review Board members or the Disputes Review Expert, as the case may be, according to the procedure set forth in Clause 67 of the Conditions of Particular Application.

**39. Corrupt or Fraudulent Practices**

39.1 The Agency requires that MDAs as well as bidders/suppliers/contractors under LSG-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Agency:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and

(ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the MDA, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial noncompetitive levels and to deprive the MDA of the benefits of free and open competition;

(b) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will declare a firm/Company ineligible, either indefinitely or for a stated period of time, to be awarded a LSG-financed contract if it at any time determines that the firm/Company has engaged in corrupt or fraudulent practices in competing for, or in executing, a LSG-financed contract.

39.2 Furthermore, bidders shall be aware of the provision stated in Sub-Clause 26.2 and Sub-Clause 63.5 of the General Conditions of Contract, Part II—Conditions of Particular Application.



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## **SECTION III. BIDDING DATA**

### **Notes on the Bidding Data**

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Section III is intended to assist the MDA in providing the specific information in relation to corresponding clauses in Section II, Instructions to Bidders, and must be prepared for each specific procurement.

The MDA should provide in the Bidding Data information and requirements specific to the circumstances of the MDA, the processing of the procurement, the applicable rules regarding Bid Price and currency, and the bid evaluation criteria that will apply to the bids. In preparing Section III, the following aspects should be checked:

- (a) Information that specifies and complements the provisions of Section II must be incorporated.
- (b) Amendments and/or supplements, if any, to the provisions of Section II, necessitated by the circumstances of the specific procurement, can be introduced only in Section III, since Section II will remain unchanged.

## Bidding Data

**Note:** This section should be filled in by the MDA before issuance of the bidding documents. The following specific data for the Works to be procured shall complement, amend, or supplement the provisions in the Instructions to Bidders. *[Instructions are provided, as needed, in italics.]*

### Instructions to Bidders Clause Reference

Whenever there is a conflict, the provisions herein shall prevail over those in the Instructions to Bidders.

<b>1.1</b>	Summary of the Works. <i>[Insert brief summary, including relationship to other contracts under the Project. If the Works are to be bid in separate contracts, describe all the contracts.]</i>
<b>1.1</b>	Name and address of the MDA.
<b>1.2</b>	Period of Completion.
<b>2.1</b>	Name and description of the Project, amount and source of fund
<b>5.1</b>	Prequalification information to be updated. <i>[Indicate what information originally submitted with the application for prequalification should be updated.]</i>
<b>12.1</b>	Bid language. <i>[The same language in which the bidding documents are written. English, should be used in International Competitive Bidding.]</i>
<b>13.2</b>	Indicate whether this contract is being bid simultaneously with other contracts on a “slice and package” basis.
<b>14.4</b>	Indicate whether the contract is subject to price adjustment. <i>[Price adjustment is mandatory for contracts expected to last more than 18 months.]</i>
<b>15.1</b>	Indicate whether the currency(ies) of the bid is (are) in accordance with Alternative A or Alternative B of Clause 15. <i>[Two alternative methods of pricing bids are acceptable for Works contracts:</i> <div style="margin-left: 40px;"> <p>(A) <i>bidders quote entirely in the currency of the country but specify the percentages of foreign currency or currencies (up to three) they require; or</i></p> <p>(B) <i>bidders quote separately in local and foreign (up to three) currencies.</i></p> </div> <i>Alternative (A) is the more frequently used arrangement. Alternative A or B should be used in conjunction with, respectively, Alternative A or B of Sub-Clause 30.1 of these Instructions and Clause 60 of the Conditions of Contract.]</i>
<b>15.2</b>	Currency of the country.

<b>16.1</b>	<p>Period of bid validity.</p> <p><i>[Insert number of days after the deadline for bid submission. This period should be realistic, allowing sufficient time to evaluate the bids, bearing in mind the complexity of the Works and the time required for obtaining references, clarifications, clearances, and approvals (including the Agency’s “Certificate of Compliance”) and for notification of the award.]</i></p>
<b>16.3</b>	<p>Percentage annual increase for foreign costs to adjust Bid Price.</p> <p>Percentage annual increase for local costs.</p> <p><i>[The value of the foreign currency factor should be based on, or comparable to, the expected annual increases in international prices. The value of the local currency factor should be based on the projected inflation in the MDA’s country for the period in question.]</i></p>
<b>17.1</b>	<p>Amount of bid security.</p> <p><i>[This amount should be the same as may be quoted in the Invitation for Bids. To avoid disclosure of bidders’ prices originating in the financial institution issuing the security, a fixed sum should be specified, in preference to a percentage of the Bid Price. The sum should be the equivalent of not less than 1 percent of the estimated cost of the Works. Alternatively, if the MDA wishes to specify a percentage of the Bid Price, it should be indicated as a “minimum of one percent,” to enable bidders to provide in excess of the minimum and thus conceal their prices.]</i></p>
<b>18.1</b>	<p>Bids are invited for alternative times for completion as specified in the bidding document between days minimum and maximum days. The method of evaluation is indicated in Paragraph 31.2 (e). The time for completion offered by the successful bidder shall be the contractual time for completion.</p> <p><i>[This provision should be included, and appropriate time periods inserted, when MDAs see potential net benefits in different times for completion; the provision also has merit for contracts bid on a “slice and package” basis. Otherwise omit.]</i></p>
<b>19.1</b>	<p>Venue, time, and date of the pre-bid meeting.</p> <p><i>[Insert address of venue, or indicate that the meeting will not take place. The meeting should take place not later than four weeks before the deadline for bid submission. It should take place concurrently with the Site visit, if any (see Sub-Clause 8.3).]</i></p>
<b>20.1</b>	<p>Number of copies of the bid to be completed and returned.</p> <p><i>[Usually two; more if essential.]</i></p>
<b>21.2</b>	<p>MDA’s address for the purpose of bid submission.</p> <p><i>[Should match the receiving address provided in the Invitation for Bids.]</i></p>
<b>21.2</b>	<p>Number of the Contract.</p>
<b>22.1</b>	<p>Deadline for submission of bids.</p>

	<i>[The time and date should be the same as that given in the Invitation for Bids, unless subsequently amended pursuant to Sub-Clause 22.2.]</i>
<b>25.1</b>	Venue, time, and date of bid opening. <i>[Time and date should be the same as those given for the deadline for submission of bids (Clause 22).]</i>
<b>30.2</b>	Currency chosen for the purpose of converting to a common currency. <i>[Specify either the local currency <b>or</b> a convertible currency.]</i> Source of exchange rate. Exchange rate on the day of opening the tender. <i>[Select a date that shall be no earlier than 28 days prior to the submission of bids, and not later than the original date for expiry of the period of bid validity.]</i>
<b>31.2(e)</b>	Alternative times for completion will be evaluated as follows. <i>[If varying times for completion are to be used in bid comparison, the method for evaluating the differences offered by bidders should be specified here as a specific amount for each week of delay from a specified “standard” or minimum completion date related to the loss of benefits to the MDA. The amount should be no more than the corresponding amount of liquidated damages, Section VII, Appendix to Bid, Sub-Clause 47.1.]</i>
<b>32.1</b>	Indicate whether domestic contractors will receive a margin of preference in bid evaluation. <i>[If the Fund Agreement authorizes the application of domestic contractor price preference, and the MDA intends to apply it to the subject contract, state “yes”; otherwise, state “no.”]</i>
<b>37</b>	Standard form and amount of performance security acceptable to the MDA. <i>[Select the kind of performance security (Bank guarantee and/or bond), and indicate the amount.</i>  <i>A <b>Bank guarantee</b> can be conditional or unconditional/on demand (see standard forms in Section IX). An amount of 5 to 10 percent of the Contract Price is commonly specified for Bank guarantees. In some countries, these guarantees are called “bonds”; however, the term “Bank guarantee” is used consistently throughout this document.</i>  <i>A <b>performance bond</b> is a conditional undertaking by a bonding or insurance company to complete the construction in the event of default by the Contractor, or to pay the amount of bond to the MDA, provided the Contractor accepts the default or a court or arbitration process so decides. (See standard forms in Section IX.)</i>
<b>38</b>	Disputes Review Method. <i>[Insert “Disputes Review Board,” or “Disputes Review Expert.”]</i>





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## SECTION IV. PART I. GENERAL CONDITIONS OF CONTRACT

### Notes on the Conditions of Contract

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The Conditions of Contract comprise two parts:

- (a) **Part I: General Conditions of Contract** (Section IV of this document), and
- (b) **Part II: Conditions of Particular Application** (Section V of this document).

The Conditions of Contract have been prepared for an admeasurement (unit price or unit rate) type of contract and cannot be used without major modifications for other types of contract, such as lump sum, turnkey, or target cost contracts.

The standard text of the General Conditions of Contract chosen must be retained intact to facilitate its reading and interpretation by bidders and its review by Agency. Any amendments and additions to the General Conditions, specific to the contract in hand, should be introduced in the Conditions of Particular Application, or in the Appendix to Bid. A number of such Particular Conditions, applicable to the above Conditions of Contract, are included in Section V and, in the interest of the MDA, are recommended for use instead of the Particular Conditions. The use of standard conditions of contract for all civil Works will ensure comprehensiveness of coverage, better balance of rights or obligations between MDA and Contractor, general acceptability of its provisions, and savings in time and cost for bid preparation and review, leading to more economical prices.

The Conditions of Particular Application take precedence over the General Conditions of Contract—see Sub-Clause 5.2, Priority of Contract Documents, in the General Conditions of Contract.

The bidding document may include a purchased copy, the cost of which can be retrieved as part of the selling price of the bidding document. Alternatively, the Conditions of Contract can be referred to in the bidding documents.

Where a copy of Part I of the Conditions of Contract is not included in the bidding documents, a page consistent with the example that follows should be completed and incorporated.



## **Part I: General Conditions of Contract**

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*[name of MDA]*

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*[name of contract]*

### CONDITIONS OF CONTRACT

#### PART I: GENERAL CONDITIONS<sup>1</sup>

The Conditions of Contract, Part I: General Conditions shall be those forming Part I of the “Conditions of Contract for Works of Civil Engineering Construction,” These Conditions are subject to the variations and additions set out in Part II hereof entitled “Conditions of Particular Application.”

**CONDITIONS OF CONTRACT**

**FOR WORKS OF CIVIL**

**ENGINEERING CONSTRUCTION**

**PART I GENERAL CONDITIONS  
WITH FORMS OF TENDER AND AGREEMENT**

## **FOREWORD**

The Conditions of Contract for Works of Civil Engineering Construction have been recommended for general use for the purpose of construction of such works where tenders are invited on an international basis. The Conditions, subject to minor modifications, are also suitable for use on domestic contracts.

In the preparation of the Conditions it was recognised that while there are numerous Clauses which will be generally applicable there are some Clauses which must necessarily vary to take account of the circumstances and locality of the Works. The Clauses of general application have been grouped together in this document and are referred to as Part I - General Conditions. They have been printed in a form which will facilitate their inclusion as printed in the contract documents normally prepared.

The General Conditions are linked with the Conditions of Particular Application, referred to as Part II, by the corresponding numbering of the Clauses, so that Parts I and II together comprise the Conditions governing the rights and obligations of the parties.

Part II must be specially drafted to suit each individual Contract.

When dredging and certain types of reclamation work are involved special consideration must be given to Part II.

To assist in the preparation of Part II explanatory material and example clauses are published with the Conditions in a separately bound document entitled "Conditions of Contract for Works of Civil Engineering Construction, Part II - Conditions of Particular Application, with Guidelines for preparation of Part II Clauses".

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## PART I - GENERAL CONDITIONS

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### Definitions and Interpretation

#### Definitions 1.1

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- (a) (i) "MDA" means Ministry, Department and Agency
- (ii) "Contractor" means the person whose tender has been accepted by the MDA and the legal successors in title to such person, but not (except with the consent of the MDA) any assignee of such person.
- (iii) "Subcontractor" means any person named in the Contract as a Subcontractor for a part of the Works or any person to whom a part of the Works has been subcontracted with the consent of the Engineer and the legal successors in title to such person, but not any assignee of any such person.
- (iv) "Engineer" means the person appointed by the MDA to act as Engineer for the purposes of the Contract and named as such in Part II of these Conditions.
- (v) "Engineer's Representative" means a person appointed from time to time by the Engineer under Sub-Clause 2.2
- (b) (i) "Contract" means these Conditions (Parts I and II), the Specification, the Drawings, the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), the Tender, the Letter of notification of award, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of notification of award or Contract Agreement (if completed).
- (ii) "Specification" means the specification of the Works included in the Contract and any modification thereof or addition thereto made under Clause 51 or submitted by the Contractor and approved by the Engineer.
- (iii) "Drawings" means all drawings, calculations and technical information of a like nature provided by the Engineer to the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.
- (iv) "Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME)" means the priced and completed Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) forming part of the Tender.
- (v) "Tender" means the Contractor's priced offer to the MDA for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of notification of award.
- (vi) "Letter of notification of award" means the formal notice of award by the MDA to the successful bidder.
- (vii) "Contract Agreement" means the contract agreement (if any) referred to in Sub-Clause 9.1.
- (viii) "Appendix to Tender" means the appendix comprised in the form of Tender annexed to these Conditions.
- (c) (i) "Commencement Date" means the date upon which the Contractor receives the notice to commence issued by the Engineer pursuant to Clause 41.
- (ii) "Time for Completion" means the time for completing the execution of and passing the Tests on Completion of the Works or any Section or part thereof as stated in the Contract (or as extended under Clause 44) calculated from the Commencement Date.

- (d) (i) "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor which are to be made by the Contractor before the Works or any Section or part thereof are taken over by the MDA.
- (ii) "Taking-Over Certificate" means a certificate issued pursuant to Clause 48.
- (e) (i) "Contract Price" means the sum stated in the Letter of notification of award as payable to the Contractor for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract.
- (ii) "Retention Money" means the aggregate of all monies retained by the MDA pursuant to Sub-Clause 60.2(a)
- (iii) "Interim Payment Certificate" means any certificate of payment issued by the Engineer other than the Final Payment Certificate
- (iv) "Final Payment Certificate" means the certificate of payment issued by the Engineer pursuant to Sub-Clause 60.8.
- (f) (i) "Works" means the Permanent Works and the Temporary Works or either of them as appropriate.
- (ii) "Permanent Works" means the permanent works to be executed (including Plant) in accordance with the Contract.
- (iii) "Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
- (iv) "Plant" means machinery, apparatus and the like intended to form or forming part of the Permanent Works.
- (v) "Contractor's Equipment" means all appliances and things of whatsoever nature (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of the Permanent Works.
- (vi) "Section" means a part of the Works specifically identified in the Contract as a Section.
- (vii) "Site" means the places provided by the MDA where the Works are to be executed and any other places as may be specifically designated in the Contract as forming part of the Site.
- (g) (i) "cost" means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but does not include any allowance for profit.
- (ii) "day" means calendar day.
- (iii) "foreign currency" means a currency of a country other than that in which the Works are to be located.
- (iv) "writing" means any hand-written, type-written, or printed communication..

<b>Headings and Marginal Notes</b>	<b>1.2</b>	The headings and marginal notes in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.
<b>Interpretation</b>	<b>1.3</b>	Words importing persons or parties shall include firm/Company and corporation and any organisation having legal capacity.
<b>Singular and Plural</b>	<b>1.4</b>	Words importing the singular only also include the plural and vice versa where the context requires.

**Notices, Consents, Approvals Certificates and Determinations** 1.5 Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “certify” or “determine” shall be construed accordingly. Any such consent, approval, certificate or determination shall not unreasonably be withheld or delayed.

### **Engineer and Engineer’s Representative**

**Engineer’s Duties and Authority** 2.1 (a) The Engineer shall carry out the duties specified in the Contract.  
 (b) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract, provided, however, that if the Engineer is required, under, the terms of his appointment by the MDA, to obtain the specific approval of the MDA before exercising any such authority, particulars of such requirements shall be set out in Part II of these Conditions. Provided further that any requisite approval shall be deemed to have been given by the MDA for any such authority exercised by the Engineer.

(c) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

**Engineer’s Representative** 2.2 The Engineer’s Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.

**Engineer’s Authority to Delegate** 2.3 The Engineer may from time to time delegate to the Engineer’s Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the MDA and the Contractor.

Any communication given by the Engineer’s Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. Provided that:

(a) any failure of the Engineer’s Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof, and

(b) if the Contractor questions any communication of the Engineer’s Representative he may refer the matter to the Engineer who shall confirm/Company, reverse or vary the contents of such communication.

**Appointment of Assistants** 2.4 The Engineer or the Engineer’s Representative may appoint any number of persons to assist the Engineer's Representative in the carrying out of his duties under Sub-Clause 2.2. He shall notify to the Contractor the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, Plant or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer's Representative.

**Instructions in Writing** 2.5 Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days, confirm in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within 7 days by the Engineer, it shall be deemed to be an instruction of the Engineer.

The provisions of this Sub-Clause shall equally apply to instructions given by the Engineer's Representative and any assistants of the Engineer or the Engineer's Representative appointed pursuant to Sub-Clause 2.4.

**Engineer to Act  
Impartially 2.6**

Wherever, under the Contract, the Engineer is required to exercise his discretion by:

- (a) giving his decision, opinion or consent,
- (b) expressing his satisfaction or approval,
- (c) determining value, or
- (d) otherwise taking action which may affect the rights and obligations of the MDA or the Contractor

he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause 67.

### **Assignment and Subcontracting**

**Assignment of  
Contract 3.1**

The Contractor shall not, without the prior consent of the MDA (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the MDA), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by

- (a) a charge in favour of the Contractor's Agents of any monies due or to become due under the Contract, or
- (b) assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable

**Subcontracting 4.1**

The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

- (a) the provision of labour,
- (b) the purchase of materials which are in accordance with the standards specified in the Contract, or
- (c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

**Assignment of  
Subcontractors'  
Obligations 4.2**

In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the MDA, at the MDA's request and cost, the benefit of such obligation for the unexpired duration thereof.

### **Contract Documents**

**Language/s and  
Law 5.1**

There is stated in Part II of these Conditions:

- (a) the language or languages in which the Contract documents shall be drawn up, and
- (b) the country or state law which shall apply to the Contract and according to which the Contract shall be construed.

**Priority of  
Contract 5.2**

The several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same

<b>Documents</b>		shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:
		<ol style="list-style-type: none"> <li>(1) The Contract Agreement (if completed);</li> <li>(2) Notification of Award</li> <li>(3) The Letter of Acceptance</li> <li>(4) The Tender;;</li> <li>(5) Part II of these Conditions;</li> <li>(6) Part I of these Conditions; and</li> <li>(7) Any other document forming part of the Contract.</li> </ol>
<b>Custody and Supply of Drawings and Documents</b>	<b>6.1</b>	<p>The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be provided to the Contractor free of charge. The Contractor shall make at his own cost any further copies required by him. Unless it is strictly necessary for the purposes of the Contract, the Drawings, Specification and other documents provided by the MDA or the Engineer shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor. Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer all Drawings, Specification and other documents provided under the Contract.</p> <p>The Contractor shall supply to the Engineer four copies of all Drawings, Specification and other documents submitted by the Contractor and approved by the Engineer in accordance with Clause 7, together with a reproducible copy of any material which cannot be reproduced to an equal standard by photocopying. In addition the Contractor shall supply such further copies of such Drawings, Specification and other documents as the Engineer may request in writing for the use of the MDA, who shall pay the cost thereof.</p>
<b>One Copy of Drawings to be Kept on Site</b>	<b>6.2</b>	One copy of the Drawings, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorised by the Engineer in writing.
<b>Disruption of Progress</b>	<b>6.3</b>	The Contractor shall give notice to the Engineer, with a copy to the MDA, whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.
<b>Delays and Cost of Delay of Drawings</b>	<b>6.4</b>	<p>If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-Clause 6.3, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the MDA and the Contractor, determine:</p> <ol style="list-style-type: none"> <li>(a) any extension of time to which the Contractor is entitled under Clause 44, and</li> <li>(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the MDA.</li> </ol>
<b>Failure by Contractor to Submit Drawings</b>	<b>6.5</b>	If the failure or inability of the Engineer to issue any drawings or instructions is caused in whole or in part by the failure of the Contractor to submit Drawings, Specification or other documents which he is required to submit under the Contract, the Engineer shall take such failure. by the Contractor into account when making his determination pursuant to Sub-Clause 6.4.
<b>Supplementary Drawings and Instructions</b>	<b>7.1</b>	The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. The Contractor shall carry out and be bound by the same.
<b>Permanent Works</b>	<b>7.2</b>	Where the Contract expressly provides that part of the Permanent Works shall be

<b>Designed by Contractor</b>		designed by the Contractor, he shall submit to the Engineer, for approval:
		(a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and
		(b) operation and maintenance manuals together with drawings of the Permanent Works as completed, in sufficient detail to enable the MDA to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design. The Works shall not be considered to be completed for the purposes of taking over in accordance with Clause 48 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer
<b>Responsibility Unaffected by Approval</b>	<b>7.3</b>	Approval by the Engineer, in accordance with Sub-Clause 7.2, shall not relieve the Contractor of any of his responsibilities under the Contract.
<b>General Obligations</b>		
<b>Contractor's General Responsibilities</b>	<b>8.1</b>	The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour, materials, Plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.
		The Contractor shall give prompt notice to the Engineer, with a copy to the MDA, of any error, omission, fault or other defect in the design of or Specification for the Works which he discovers when reviewing the Contract or executing the Works.
<b>Site Operations and Methods of Construction</b>	<b>8.2</b>	The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise agreed) for the design or specification of Permanent Works, or for the design or specification of any Temporary Works not prepared by the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.
<b>Contract Agreement</b>	<b>9.1</b>	The Contractor shall, if called upon so to do, enter into and execute the Contract Agreement, to be prepared and completed at the cost of the Contractor, in the form annexed to these Conditions with such modification as may be necessary.
<b>Performance Security</b>	<b>10.1</b>	If the Contract requires the Contractor to obtain security for his proper performance of the Contract, he shall obtain and provide to the MDA such security within 28 days after the receipt of the Letter of notification of award, in the sum stated in the Appendix to Tender. When providing such security to the MDA, the Contractor shall notify the Engineer of so doing. Such security shall be in the form annexed to these Conditions or in such other form as may be agreed between the MDA and the Contractor. The institution providing such security shall be subject to the approval of the MDA. The cost of complying with the requirements of this Clause shall be borne by the Contractor, unless the Contract otherwise provides.

<b>Period of Validity of Performance Security</b>	<b>10.2</b>	The performance security shall be valid until the Contractor has executed and completed the Works and remedied any defects therein in accordance with the Contract. No claim shall be made against such security after the issue of the Defects Liability Certificate in accordance with Sub-Clause 62.1 and such security shall be returned to the Contractor within 14 days of the issue of the said Defects Liability Certificate.
<b>Claims under Performance Security</b>	<b>10.3</b>	Prior to making a claim under the performance security the MDA shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.
<b>Inspection of Site</b>	<b>11.1</b>	<p>The MDA shall have made available to the Contractor, before the submission by the Contractor of the Tender, such data on hydrological and sub-surface conditions as have been obtained by or on behalf of the MDA from investigations undertaken relevant to the Works but the Contractor shall be responsible for his own interpretation thereof.</p> <p>The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself (so far as is practicable, having regard to considerations of cost and time) before submitting his Tender, as to:</p> <ul style="list-style-type: none"> <li>(a) the form and nature thereof, including the sub-surface conditions,</li> <li>(b) the hydrological and climatic conditions,</li> <li>(c) the extent and nature of work and materials necessary for the execution and completion of the Works and the remedying of any defects therein, and</li> <li>(d) the means of access to the Site and the accommodation he may require,</li> </ul> <p>and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender. The Contractor shall be deemed to have based his Tender on the data made available by the MDA and on his own inspection and examination, all as aforementioned</p>
<b>Sufficiency of Tender</b>	<b>12.1</b>	The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect of the supply of goods, materials, Plant or services or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.
<b>Not Foreseeable Physical Obstructions or Conditions</b>	<b>12.2</b>	<p>If, however, during the execution of the Works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the MDA. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the MDA and the Contractor, determine</p> <ul style="list-style-type: none"> <li>(a) any extension of time to which the Contractor is entitled under Clause 44, and</li> <li>(b) the amount of any costs which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price,</li> </ul> <p>and shall notify the Contractor accordingly, with a copy to the MDA. Such determination shall take account of any instruction which the Engineer may issue to the Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer which the Contractor may take in the absence of specific instructions from the Engineer.</p>

<b>Work to be in Accordance with Contract</b>	<b>13.1</b>	Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer. The Contractor shall comply with and adhere strictly to the Engineer's instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer (or his delegate).
<b>Programme to be Submitted</b>	<b>14.1</b>	The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of notification of award, submit to the Engineer for his consent a programme, in such form and detail as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.
<b>Revised Programme</b>	<b>14.2</b>	If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 14.1, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.
<b>Cash Flow Estimate to be Submitted</b>	<b>14.3</b>	The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of notification of award, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.
<b>Contractor not Relieved of Duties or Responsibilities</b>	<b>14.4</b>	The submission to and consent by the Engineer of such programmes or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.
<b>Contractor's Superintendence</b>	<b>15.1</b>	<p>The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorised representative approved of by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer.</p> <p>If approval of the representative is withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving notice of such withdrawal, remove the representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.</p>
<b>Contractor's Employees</b>	<b>16.1</b>	<p>The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein</p> <p>(a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works, and</p> <p>(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.</p>
<b>Engineer at Liberty to Object</b>	<b>16.2</b>	The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.
<b>Setting-out</b>	<b>17.1</b>	<p>The Contractor shall be responsible for:</p> <p>(a) the accurate setting-out of the Works in relation to original points, lines and</p>



levels of reference given by the Engineer in writing,

(b) the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works, and

(c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in which case the Engineer shall determine an addition to the Contract Price in accordance with Clause 51 and shall notify the Contractor accordingly, with a copy to the MDA.

The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

<b>Boreholes and Exploratory Excavation</b>	<b>18.1</b>	If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause 51, unless an item or a Provisional Sum in respect of such work is included in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).
<b>Safety, Security and Protection of the Environment</b>	<b>19.1</b>	<p>The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:</p> <p>(a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the MDA) in an orderly state appropriate to the avoidance of danger to such persons,</p> <p>(b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and</p> <p>(c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.</p>
<b>MDA's Responsibilities</b>	<b>19.2</b>	<p>If under Clause 31 the MDA shall carry out work on the Site with his own workmen he shall, in respect of such work:</p> <p>(a) have full regard to the safety of all persons entitled to be upon the Site, and</p> <p>(b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.</p> <p>If under Clause 31 the MDA shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.</p>
<b>Care of Works</b>	<b>20.1</b>	<p>The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, when the responsibility for the said care shall pass to the MDA. Provided that:</p> <p>(a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent, Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the MDA, and</p> <p>(b) the Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.</p>

<b>Responsibility to Rectify Loss or Damage</b>	<b>20.2</b>	If any loss or damage happens to the Works, or any part thereof, or materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined in Sub-Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.
<b>Loss or Damage Due to MDA's Risks</b>	<b>20.3</b>	In the event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the MDA. In the case of a combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the MDA.
<b>MDA's Risks</b>	<b>20.4</b>	<p>The MDA's risks are:</p> <ul style="list-style-type: none"> <li>(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,</li> <li>(b) rebellion, revolution, insurrection, or military or usurped power, or civil war,</li> <li>(c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,</li> <li>(d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,</li> <li>(e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works,</li> <li>(f) loss or damage due to the use or occupation by the MDA of any Section or part of the Permanent Works, except as may be provided for in the Contract,</li> <li>(g) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible, and</li> <li>(h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions</li> </ul>
<b>Insurance of Works and Contractor's Equipment</b>	<b>21.1</b>	<p>The Contractor shall, without limiting his or the MDA's obligations and responsibilities under Clause 20, insure:</p> <ul style="list-style-type: none"> <li>(a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost (the term "cost" in this context shall include profit),</li> <li>(b) an additional sum of 15 per cent of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and</li> <li>(c) the Contractor's Equipment and other things brought onto the Site by the Contractor, for a, sum sufficient to provide for their replacement at the Site.</li> </ul>
<b>Scope of Cover</b>	<b>21.2</b>	<p>The insurance in paragraphs (a) and (b) of Sub-Clause 21.1 shall be in the joint names of the Contractor and the MDA and shall cover:</p> <ul style="list-style-type: none"> <li>(a) the MDA and the Contractor against all loss or damage from whatsoever cause arising, other than as provided in Sub-Clause 21.4, from the start of work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and</li> <li>(b) the Contractor for his liability: <ul style="list-style-type: none"> <li>(i) during the Defects Liability Period for loss or damage arising from a</li> </ul> </li> </ul>

		cause occurring prior to the commencement of the Defects Liability Period, and
		(ii) for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.
<b>Responsibility for Amounts not Recovered</b>	<b>21.3</b>	Any amounts not insured or not recovered from the insurers shall be borne by the MDA or the Contractor in accordance with their responsibilities under Clause 20.
<b>Exclusions</b>	<b>21.4</b>	There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by: <ul style="list-style-type: none"> <li>(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,</li> <li>(b) rebellion, revolution, insurrection, or military or usurped power, or civil war,</li> <li>(c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, or</li> <li>(d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.</li> </ul>
<b>Damage to Persons and Property</b>	<b>22.1</b>	The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the MDA against all losses and claims in respect of: <ul style="list-style-type: none"> <li>(a) death of or injury to any person, or</li> <li>(b) loss of or damage to any property (other than the Works),</li> </ul> <p>which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause 22.2.</p>
<b>Exceptions</b>	<b>22.2</b>	The “exceptions” referred to in Sub-Clause 22.1 are: <ul style="list-style-type: none"> <li>(a) the permanent use or occupation of land by the Works, or any part thereof,</li> <li>(b) the right of the MDA to execute the Works, or any part thereof, on, over, under, in or through any land,</li> <li>(c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract, and</li> <li>(d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the MDA, his agents, servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the MDA, his servants or agents or other contractors for the injury or damage.</li> </ul>
<b>Indemnity by MDA</b>	<b>22.3</b>	The MDA shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause 22.2.
<b>Third Party Insurance (including MDA’s Property)</b>	<b>23.1</b>	The Contractor shall, without limiting his or the MDA’s obligations and responsibilities under Clause 22, insure, in the joint names of the Contractor and the MDA, against liabilities for death of or injury to any person (other than as provided in Clause 24) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract, other than the exceptions defined in paragraphs (a), (b) and (c) of Sub-Clause 22.2.
<b>Minimum Amount</b>	<b>23.2</b>	Such insurance shall be for at least the amount stated in the Appendix to Tender.

<b>of insurance</b>		
<b>Cross Liabilities</b>	<b>23.3</b>	The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the MDA as separate insured.
<b>Accident or Injury to Workmen</b>	<b>24.1</b>	The MDA shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor, other than death or injury resulting from any act or default of the MDA, his agents or servants. The Contractor shall indemnify and keep indemnified the MDA against all such damages and compensation, other than those for which the MDA is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.
<b>Insurance Against Accident to Workmen</b>	<b>24.2</b>	The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the MDA is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the MDA, when required, such policy of insurance and the receipt for the payment of the current premium.
<b>Evidence and Terms of Insurances</b>	<b>25.1</b>	The Contractor shall provide evidence to the MDA prior to the start of work at the Site that the insurances required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the MDA. When providing such evidence and such policies to the MDA, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of notification of award. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the MDA.
<b>Adequacy of Insurances</b>	<b>25.2</b>	The Contractor shall notify the insurers of changes in the nature, extent or programme for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the MDA the insurance policies in force and the receipts for payment of the current premiums.
<b>Remedy on Contractor's Failure to Insure</b>	<b>25.3</b>	If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the policies to the MDA within the period required by Sub-Clause 25.1, then and in any such case the MDA may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.
<b>Compliance with Policy Conditions</b>	<b>25.4</b>	In the event that the Contractor or the MDA fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.

- Compliance with Statutes, Regulations**    **26.1**    The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:
- (a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority in relation to the execution and completion of the Works and the remedying of any defects therein, and
  - (b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works, and the Contractor shall keep the MDA indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the MDA shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.
- Fossils**    **27.1**    All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the MDA and the Contractor, be deemed to be the absolute property of the MDA. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the MDA and the Contractor, determine:
- (a) any extension of time to which the Contractor is entitled under Clause 44, and
  - (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the MDA.
- Patent Rights**    **28.1**    The Contractor shall save harmless and indemnify the MDA from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.
- Royalties**    **28.2**    Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.
- Interference with Traffic and Adjoining Properties**    **29.1**    All operations necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:
- (a) the convenience of the public, or
  - (b) the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the MDA or of any other person.
- The Contractor shall save harmless and indemnify the MDA in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Contractor is responsible therefor.

- Avoidance of Damage to Roads** 30.1 The Contractor shall use every reasonable means to prevent any of the roads or bridge communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.
- Transport of Contractor's Equipment or Temporary Works** 30.2 Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the MDA against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the MDA, and shall negotiate and pay all claims arising solely out of such damage.
- Transport of Materials or Plant** 3.3 If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer with a copy to the MDA, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the haulier of such materials or Plant is required to indemnify the road authority against damage the MDA shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the MDA shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the MDA and the Contractor, to be due to such failure shall be recoverable from the Contractor by the MDA and may be deducted by the MDA from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the MDA. Provided also that the MDA shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the MDA shall consult with the Contractor before such settlement is agreed.
- Waterborne Traffic** 30.4 Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "road" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.
- Opportunities for Other Contractors** 31.1 The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:
- (a) any other contractors employed by the MDA and their workmen
  - (b) the workmen of the MDA, and
  - (c) the workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the MDA may enter into in connection with or ancillary to the Works.
- Facilities for Other Contractors** 31.2 If however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer:
- (a) make available to any such other contractor, or to the MDA or any such authority, any roads or ways for the maintenance of which the Contractor is responsible,
  - (b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site, or

(c) provide any other service of whatsoever nature for any such, the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the MDA.

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| <b>Contractor to Keep Site Clear</b>                | <b>32.1</b> | During the execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.  |
| <b>Clearance of Site on Completion</b>              | <b>33.1</b> | Upon the issue of any Taking-Over Certificate the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period. |
| <b>Engagement of Staff and Labour</b>               | <b>34.1</b> | The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.  |
| <b>Returns of Labour and Contractor's Equipment</b> | <b>35.1</b> | The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor's Equipment as the Engineer may require.   |

### **Materials, Plant and Workmanship**

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|--|-------------|---|
| <b>Quality of Materials, Plant and Workmanship</b> | <b>36.1</b> | <p>All materials, Plant and workmanship shall be:</p> <p>(a) of the respective kinds described in the Contract and in accordance with the Engineer's instructions, and</p> <p>(b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.</p> <p>The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or Plant and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Engineer.</p> |
| <b>Cost of Samples</b>                             | <b>36.1</b> | All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract.   |
| <b>Cost of Tests</b>                               | <b>36.3</b> | <p>The cost of making any test shall be borne by the Contractor if such test is:</p> <p>(a) clearly intended by or provided for in the Contract, or</p> <p>(b) particularised in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) in sufficient detail to enable the Contractor to price or allow for the same in his Tender.</p>  |

<b>Cost of Tests not Provided for</b>	<b>36.4</b>	<p>If any test required by the Engineer which is:</p> <p>(a) not so intended by or provided for,</p> <p>(b) (in the cases above mentioned) not so particularised, or</p> <p>(c) (though so intended or provided for) required by the Engineer to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials or Plant tested, shows the materials, Plant or workmanship not to be in accordance with the provisions of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub-Clause 36.5 shall apply.</p>
<b>Engineer's Determination where Tests not Provided for</b>	<b>36.5</b>	<p>Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies the Engineer shall, after due consultation with the MDA and the Contractor, determine:</p> <p>(a) any extension of time to which the Contractor is entitled under Clause 44, and</p> <p>(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the MDA.</p>
<b>Inspection of Operations</b>	<b>37.1</b>	<p>The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.</p>
<b>Inspection and Testing</b>	<b>37.2</b>	<p>The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.</p>
<b>Dates for Inspection And Testing</b>	<b>37.3</b>	<p>The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate.</p>
<b>Rejection</b>	<b>37.4</b>	<p>If, at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the Engineer so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the MDA by the repetition of the tests shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the MDA and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the MDA.</p>



<b>Independent Inspection</b>	<b>37.5</b>	The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub-Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.
<b>Examination of Work before Covering up</b>	<b>38.1</b>	No part of the Works shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works or foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.
<b>Uncovering and Making Openings</b>	<b>38.2</b>	The Contractor shall uncover any part of the Works or make openings in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the MDA and the Contractor, determine the amount of the Contractor's costs in respect of such of uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the MDA. In any other case all costs shall be borne by the Contractor.
<b>Removal of Improper Work, Materials or Plant</b>	<b>39.1</b>	The Engineer shall have authority to issue instructions from time to time, for: <ul style="list-style-type: none"> <li>(a) the removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not in accordance with the Contract,</li> <li>(b) the substitution of proper and suitable materials or Plant, and</li> <li>(c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of <ul style="list-style-type: none"> <li>(i) materials, Plant or workmanship, or</li> <li>(ii) design by the Contractor or for which he is responsible, is not, in the opinion of the Engineer, in accordance with the Contract.</li> </ul> </li> </ul>
<b>Default of Contractor in Compliance</b>	<b>39.2</b>	In case of default on the part of the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the MDA shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the MDA, and may be deducted by the MDA from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the MDA.
<b>Suspension</b>		
<b>Suspension of Work</b>	<b>40.1</b>	The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is: <ul style="list-style-type: none"> <li>(a) otherwise provided for in the Contract,</li> <li>(b) necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible,</li> <li>(c) necessary by reason of climatic conditions on the Site, or</li> <li>(d) necessary for the proper execution of the Works or for the safety of the Works</li> </ul>

or any part thereof (save to the extent that such necessity arises from any act or default by the Engineer or the MDA or from any of the risks defined in Sub-Clause 20.4), Sub-Clause 40.2 shall apply.

**Engineer's  
Determination  
following  
Suspension,**

**40.2** Where, pursuant to Sub-Clause 40.1, this Sub-Clause applies the Engineer shall after due consultation with the MDA and the Contractor, determine

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension, and shall notify the Contractor accordingly, with a copy to the MDA.

**Suspension  
lasting more than  
84 Days**

**40.3** If the progress of the Works or any part thereof is suspended on the instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause 40.1, the Contractor may give notice to the Engineer requiring permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 51 by giving a further notice to the Engineer to that effect, or, where it affects the whole of the Works, treat the suspension as an event of default by the MDA and terminate his employment under the Contract in accordance with the provisions of Sub-Clause 69.1, whereupon the provisions of Sub-Clauses 69.2 and 69.3 shall apply.

### **Commencement and Delays**

**Commencement  
of Works**

**41.1** The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Engineer, which notice shall be issued within the time stated in the Appendix to tender after the date of the Letter of notification of award. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

**Possession of  
Site and Access  
Thereo**

**42.1** Save insofar as the Contract may prescribe:

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time
- (b) the order in which such portions shall be made available to the Contractor, and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the MDA will, with the Engineer's notice to commence the Works, give to the Contractor possession of
- (c) so much of the Site, and
- (d) such access as, in accordance with the Contract, is to be provided by the MDA as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer with a copy to the MDA, make. The MDA will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.

<b>Failure to Give Possession</b>	<b>42.2</b>	<p>If the Contractor suffers delay and/or incurs costs from failure on the part of the MDA to give possession in accordance with the terms of Sub-Clause 42. 1, the Engineer shall, after due consultation with the MDA and the Contractor, determine:</p> <p>(a) any extension of time to which the Contractor is entitled under Clause 44, and</p> <p>(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the MDA.</p>
<b>Rights of Way and Facilities</b>	<b>42.3</b>	<p>The Contractor shall bear all costs and charges for special or temporary rights of way required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works</p>
<b>Time for Completion</b>	<b>43.1</b>	<p>The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed in accordance with the provisions of Clause 48, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.</p>
<b>Extension of Time for Completion</b>	<b>44.1</b>	<p>In the event of:</p> <p>(a) the amount or nature of extra or additional work,</p> <p>(b) any cause of delay referred to in these Conditions,</p> <p>(c) exceptionally adverse climatic conditions,</p> <p>(d) any delay, impediment or prevention by the MDA, or</p> <p>(e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible,</p> <p>being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the MDA and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the MDA.</p>
<b>Contractor to Provide Notification and Detailed Particulars</b>	<b>44.2</b>	<p>Provided that the Engineer is not bound to make any determination unless the Contractor has</p> <p>(a) within 28 days after such event has first arisen notified the Engineer with a copy to the MDA, and</p> <p>(b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.</p>
<b>Interim Determination of Extension</b>	<b>44.3</b>	<p>Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2(b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and, on receipt of the final particulars, the Engineer shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases the Engineer shall make his determination after due consultation with the MDA and the Contractor and shall notify the Contractor of the determination, with a copy to the MDA. No final review shall result in a decrease of any extension of time already determined by the Engineer.</p>

<b>Restriction on Working Hours</b>	<b>45.1</b>	Subject to any provision to the contrary contained in the Contract, none of the Works shall, save as hereinafter provided, be carried on during the night or on locally recognised days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shifts.
<b>Rate of Progress</b>	<b>46.1</b>	If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the MDA in additional supervision costs, such costs shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the MDA, and may be deducted by the MDA from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the MDA.
<b>Liquidated Damages for Delay</b>	<b>47.1</b>	If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the MDA the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender. The MDA may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.
<b>Reduction of Liquidated Damages</b>	<b>47.2</b>	If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

- Taking-Over Certificate** 48.1 When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, with a copy to the MDA, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, with a copy to the MDA, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of -Over Certificate within 21 days of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.
- Taking Over of Sections or Parts** 48.2 Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of:
- (a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender,
- (b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the MDA, or
- (c) any part of the Permanent Works which the MDA has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).
- Substantial Completion of Parts** 48.3 If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period.
- Surfaces Requiring Reinstatement** 48.4 Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.
- Defects Liability**
- Defects Liability Period** 49.1 In these Conditions the expression "Defects Liability Period" shall mean the defects liability period named in the Appendix to Tender, calculated from:
- (a) the date of completion of the Works certified by the Engineer in accordance with Clause 48, or
- (b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified,
- and in relation to the Defects Liability Period the expression "the Works" shall be construed accordingly.

- Completion of Outstanding Work and Remedying Defects** 49.2 To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the MDA in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:
- (a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date, and
- (b) execute all such work of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.
- Cost of Remedying Defects** 49.3 All work referred to in Sub-Clause 49.2 (b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:
- (a) the use of materials, Plant or workmanship not in accordance with the Contract,
- (b) where the Contractor is responsible for the design of part of the Permanent works, any fault in such design, or
- (c) he neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.
- If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the MDA.
- Contractor's Failure to Carry Out Instructions** 49.4 In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the MDA shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the MDA, and may be deducted by the MDA from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the MDA.
- Contractor to Search** 50.1 If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the MDA, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the MDA and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the MDA. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.

### **Alterations, Additions and Omissions**

- Variations** 51.1 The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:
- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work (but not if the omitted work is to be carried out by the MDA or by another contractor),
- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, position and dimensions of any part of the Works,

(e)execute additional work of any kind necessary for the completion of the Works, or

(f)change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

<b>Instructions for Variations</b>	<b>51.2</b>	The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).
<b>Valuation of Variations</b>	<b>52.1</b>	All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as “varied work”), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the MDA and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the MDA. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.
<b>Power of Engineer to Fix Rates</b>	<b>52.2</b>	<p>Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the MDA and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the MDA. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.</p> <p>Provided also that no varied work instructed to be done by the Engineer pursuant to Clause 51 shall be valued under Sub-Clause 52.1 or under this Sub-Clause unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:</p> <p>(a)by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or</p> <p>(b)by the Engineer to the Contractor of his intention to vary a rate or price/</p>
<b>Variations Exceeding 15 per cent</b>	<b>52.3</b>	<p>If, on the issue of the Taking-Over Certificate for the whole of the Works, it is found that as a result of:</p> <p>(a)all varied work valued under Sub-Clauses 52.1 and 52.2, and</p> <p>(b)all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), excluding Provisional Sums, dayworks and adjustments of price made under</p>

Clause 70,

but not from any other cause, there have been additions to or deductions from the Contract Price which taken together are in excess of 15 per cent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price, excluding Provisional Sums and allowance for dayworks, if any) then and in such event (subject to any action already taken under any other Sub-Clause of this Clause), after due consultation by the Engineer with the MDA and the Contractor, there shall be added to or deducted from the Contract Price such further sum as may be agreed between the Contractor and the Engineer or, failing agreement, determined by the Engineer having regard to the Contractor's Site and general overhead costs of the Contract. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the MDA. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of 15 per cent of the Effective Contract Price.

**Daywork 52.4** The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a daywork basis. The Contractor shall then be paid for such varied work under the terms set out in the daywork schedule included in the Contract and at the rates and prices affixed thereto by him in the Tender.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of such of the Works executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor's Equipment used thereon or therefor other than Contractor's Equipment which is included in the percentage addition in accordance with such daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as daywork, on being satisfied as to the time employed and the labour, materials and Contractor's Equipment used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

### Procedure for Claims

**Notice of Claims 53.1** Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, with a copy to the MDA, within 28 days after the event giving rise to the claim has first arisen.

**Contemporary Records 53.2** Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the MDA's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

**Substantiation of Claims 53.3** Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon



which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event. The Contractor shall, if required by the Engineer so to do, copy to the MDA all accounts sent to the Engineer pursuant to this Sub-Clause.

- Failure to Comply** 53.4 If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clauses 53.2 and 53.3).
- Payment of Claims** 53.5 The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer, after due consultation with the MDA and the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the MDA.
- Contractor's Equipment, Temporary Works and Materials**
- Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works** 54.1 All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.
- MDA not Liable for Damage** 54.2 The MDA shall not at any time be liable, save as mentioned in Clauses 20 and 65, for the loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.
- Customs Clearance** 54.3 The MDA will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.
- Re-export of Contractor's Equipment** 54.4 In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the MDA will use his best endeavours to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.

<b>Conditions of Hire of Contractor's Equipment</b>	<b>54.5</b>	With a view to securing, in the event of termination under Clause 63, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the MDA within 7 days after the date on which any termination has become effective, and on the MDA undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the MDA on the same terms in all respects as the same was hired to the Contractor save that the MDA shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of executing and completing the Works and remedying any defects therein, under the terms of the said Clause 63.
<b>Costs for the Purpose of Clause 63</b>	<b>54.6</b>	In the event of the MDA entering into any agreement for the hire of Contractor's Equipment pursuant to Sub-Clause 54.5, all sums properly paid by the MDA under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause 63, to be part of the cost of executing and completing the Works and the remedying of any defects therein.
<b>Incorporation of Clause in Subcontracts</b>	<b>54.7</b>	The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or materials brought on to the Site by the Subcontractor.
<b>Approval of Materials not Implied</b>	<b>54.8</b>	The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

### Measurement

<b>Quantities</b>	<b>55.1</b>	The quantities set out in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.
<b>Work to be Measured</b>	<b>56.1</b>	<p>The Engineer, shall except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorised agent, who shall:</p> <p>(a)forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and</p> <p>(b)supply all particulars required by the Engineer.</p> <p>Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm/Company or vary them.</p>
<b>Method of Measurement</b>	<b>57.1</b>	The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.

**Breakdown of Lump Sum Items** 57.2 For the purposes of statements submitted in accordance with Sub-Clause 60.1, the Contractor shall submit to the Engineer, within 28 days after the receipt of the Letter of notification of award, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall be subject to the approval of the Engineer.

### Provisional Sums

**Definition of “Provisional Sum”** 58.1 “Provisional Sum” means a sum included in the Contract and so designated in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the MDA.

**Use of Provisional Sums** 58.2 In respect of every Provisional Sum the Engineer shall have authority to issue instructions for the execution of work or for the supply of goods, materials, Plant or services by:

(a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52, and

(b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefor shall be determined and paid in accordance with Sub-Clause 59.4.

**Production of Vouchers** 58.3 The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

### Nominated Subcontractors

**Definition of “Nominated Subcontractors”** 59.1 All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the MDA or the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in this Contract as “nominated Subcontractors”.

**Nominated Subcontractors; Objection to Nomination** 59.2 The Contractor shall not be required by the MDA or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provisions:

(a) that in respect of the work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the MDA under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and

(b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of

- any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.
- Design Requirements to be Expressly Stated** 59.3 If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.
- Payments to Nominated Subcontractors** 59.4 For all work executed or goods, materials, Plant or services supplied by any nominated Subcontractor, the Contractor shall be entitled to:
- (a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the subcontract;
- (b) in respect of labour supplied by the Contractor, the sum, if any, entered in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause 58.2, as may be determined in accordance with Clause 52; and
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) for such purpose.
- Certification of Payments to Nominated Subcontractors** 59.5 Before issuing, under Clause 60, any certificate, which includes any payment in respect of work done or goods, materials, Plant or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor:
- (a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments, and
- (b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing,
- the MDA shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontract, which the Contractor has failed to make to such nominated Subcontractor and to deduct by way of set-off the amount so paid by the MDA from any sums due or to become due from the MDA to the Contractor.
- Provided that, where the Engineer has certified and the MDA has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favour of the Contractor, deduct from the amount thereof the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

## Certificates and Payment

- |                                   |             |   |
|-----------------------------------|-------------|---|
| <b>Monthly Statements</b>         | <b>60.1</b> | <p>The Contractor shall submit to the Engineer after the end of each month six copies, each signed by the Contractor's representative approved by the Engineer in accordance with Sub-Clause 15.1, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled up to the end of the month in respect of:</p> <ul style="list-style-type: none"> <li>(a) the value of the Permanent Works executed,</li> <li>(b) any other items in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) including those for Contractor's Equipment, Temporary Works, dayworks and the like,</li> <li>(c) the percentage of the invoice value of listed materials, all as stated in the Appendix to Tender, and Plant delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works,</li> <li>(d) adjustments under Clause 70, and</li> <li>(e) any other sum to which the Contractor may be entitled under the Contract or otherwise.</li> </ul>   |
| <b>Monthly Payments</b>           | <b>60.2</b> | <p>The Engineer shall, within 28 days of receiving such statement, deliver to the MDA an Interim Payment Certificate stating the amount of payment to the Contractor which the Engineer considers due and payable in respect of such statement, subject:</p> <ul style="list-style-type: none"> <li>(a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in the Appendix to Tender, to the amount to which the Contractor is entitled under paragraphs (a), (b), (c) and (e) of Sub-Clause 60.1 until the amount so retained reaches the Limit of Retention Money stated in the Appendix to Tender, and</li> <li>(b) secondly, to the deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the MDA.</li> </ul> <p>Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Tender.</p> <p>Notwithstanding the terms of this Clause or any other Clause of the Contract no amount will be certified by the Engineer for payment until the performance security, if required under the Contract, has been provided by the Contractor and approved by the MDA.</p>   |
| <b>Payment of Retention Money</b> | <b>60.3</b> | <ul style="list-style-type: none"> <li>(a) Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.</li> <li>(b) Upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor. Provided that, in the event of different Defects Liability Periods having become applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression "expiration of the Defects Liability Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods. Provided also that if at such time there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.</li> </ul> |
| <b>Correction of Certificates</b> | <b>60.4</b> | <p>The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which shall have been issued by him and shall have authority, if any work is not being carried out to his satisfaction,</p>  |

		to omit or reduce the value of such work in any Interim Payment Certificate.
<b>Statement at Completion</b>	<b>60.5</b>	<p>Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer six copies of Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer:</p> <p>(a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate,</p> <p>(b) any further sums which the Contractor considers to be due, and</p> <p>(c) an estimate of amounts which the Contractor considers will become due to him under the Contract.</p> <p>The estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.</p>
<b>Final Statement</b>	<b>60.6</b>	<p>Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62. 1, the Contractor shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer:</p> <p>(a) the value of all work done in accordance with the Contract, and</p> <p>(b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.</p> <p>If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").</p> <p>If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the MDA an Interim Payment Certificate for those parts of the draft final statement, if any, which are not in dispute. The dispute may then be settled in accordance with Clause 67.</p>
<b>Discharge</b>	<b>60.7</b>	<p>Upon submission of the Final Statement, the Contractor shall give to the MDA, with a copy to the Engineer, a written discharge confirm/Companying that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.8 has been made and the performance security referred to in Sub-Clause 10.1, if any, has been returned to the Contractor.</p>
<b>Final Payment Certificate</b>	<b>60.8</b>	<p>Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the MDA (with a copy to the Contractor) a Final Payment Certificate stating:</p> <p>(a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and</p> <p>(b) after giving credit to the MDA for all amounts previously paid by the MDA and for all sums to which the MDA is entitled other than under Clause 47, the balance, if any, due from the MDA to the Contractor or from the Contractor to the MDA as the case may be.</p>
<b>Cessation of MDA's Liability</b>	<b>60.9</b>	<p>The MDA shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.</p>
<b>Time for Payment</b>	<b>60.10</b>	<p>The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the MDA to the Contractor within 28 days after</p>

such Interim Payment Certificate has been delivered to the MDA, or, in the case of the Final Payment Certificate referred to in Sub-Clause 60.8, within 56 days, after such Final Payment Certificate has been delivered to the MDA. In the event of the failure of the MDA to make payment within the times stated, the MDA shall pay to the Contractor interest at the rate stated in the Appendix to Tender upon all sums unpaid from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69 or otherwise.

**Approval only by Defects Liability Certificate** 61.1 Only the Defects Liability Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.

**Defects Liability Certificate** 62.1 The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the MDA, with a copy to, the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 49 and 50, have been completed to the satisfaction of the Engineer. Provided that the issue of the Defects Liability Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.

**Unfulfilled Obligations** 62.2 Notwithstanding the issue of the Defects Liability Certificate the Contractor and the MDA shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

## Remedies

**Default of Contractor** 63.1 If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary Agencyruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3. 1, or has an execution levied on his goods, or if the Engineer certifies to the MDA, with a copy to the Contractor, that, in his opinion, the Contractor:

(a)has repudiated the Contract,

(b)without reasonable excuse has failed

(i) to commence the Works in accordance with Sub-Clause 4 1. 1, or

(ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Sub-Clause 46. 1,

(c)has failed to comply with a notice issued pursuant to Sub-Clause 37.4 or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after having received it,

(d)despite previous warning from the Engineer, in writing, is otherwise

- persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or
- (e) has contravened Sub-Clause 4.1,
- then the MDA may, after giving 14 days' notice to the Contractor, enter upon the Site and the Works and terminate the employment of the Contractor without thereby releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and authorities conferred on the MDA or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The MDA or such other contractor may use for such completion so much of the Contractor's Equipment, Temporary Works and materials as he or they may think proper.
- Valuation at Date of Termination 63.2** The Engineer shall, as soon as may be practicable after any such entry and termination by the MDA, fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute, and shall certify:
- a) what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
- (b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works.
- Payment after Termination 63.3** If the MDA terminates the Contractor's employment under this Clause, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and there after until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the MDA have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the MDA the amount of such excess and it shall be deemed a debt due by the Contractor to the MDA and shall be recoverable accordingly.
- Assignment of Benefit of Agreement 63.4** Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and termination referred to in Sub-Clause 63. 1, assign to the MDA the benefit of any agreement for the supply of any goods materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.
- Urgent Remedial Work 64.1** If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the MDA shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary. If the work or repair so done by the MDA is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the MDA, and may be deducted by the MDA from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the MDA. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.
- Special Risks**
- No Liability for Special Risks 65.1** The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2, whether by way of indemnity or otherwise, for or in respect of:
- (a) destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks,



- (b)destruction of or damage to property, whether of the MDA or third parties, or  
(c) injury or loss of life.
- Special Risks 65.2** The special risks are:  
(a)the risks defined under paragraphs (a), (c), (d) and (e) of Sub-Clause 20.4, and  
(b)the risks defined under paragraph (b) of Sub-Clause 20.4 insofar as these relate to the country in which the Works are to be executed.
- Damage to Works by Special Risks 65.3** If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:  
(a)rectifying any such destruction or damage to the Works, and  
(b)replacing or rectifying such materials or Contractor's Equipment, and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the MDA.
- Projectile, Missile 65.4** Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.
- Increased Costs arising from Special Risks 65.5** Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the MDA shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the MDA and the Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the MDA.
- Outbreak of War 65.6** If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the MDA shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and Clause 67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

<b>Removal of Contractor's Equipment on Termination</b>	<b>65.7</b>	If the Contract is terminated under the provisions of Sub-Clause 65.6, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.
<b>Payment if Contract Terminated</b>	<b>65.8</b>	<p>If the Contract is terminated as aforesaid, the Contractor shall be paid by the MDA, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:</p> <p>(a) the amounts payable in respect of any preliminary items referred to in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;</p> <p>(b) the cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the MDA upon such payments being made by him;</p> <p>(c) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause;</p> <p>(d) any additional sum payable under the provisions of Sub-Clauses 65.3 and 65.5;</p> <p>(e) such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Contractor's Equipment under Sub-Clause 65.7 and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost; and</p> <p>(f) the reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.</p> <p>Provided that against any payment due from the MDA under this Sub-Clause, the MDA shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the MDA from the Contractor under the terms of the Contract. Any sums payable under this Sub-Clause shall, after due consultation with the MDA and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the MDA.</p>

### **Release from Performance**

<b>Payment in Event of Release from Performance</b>	<b>66.1</b>	If any circumstance outside the control of both parties arises after the issue of the Letter of notification of award which renders it impossible or unlawful for either or both parties to fulfil his or their contractual obligations, or under the law governing the Contract the parties are released from further performance, then the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and the sum payable by the MDA to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 if the Contract had been terminated under the provisions of Clause 65.
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## Settlement of Disputes

- Engineer's Decision 67.1** If a dispute of any kind whatsoever arises between the MDA and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the MDA and the Contractor. Such decision shall state that it is made pursuant to this Clause.
- Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the MDA shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.
- If either the MDA or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the Eighty-fourth day after the day on which he received the reference, then either the MDA or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.
- If the Engineer has given notice of his decision as to a matter in dispute to the MDA and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the MDA or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the MDA and the Contractor.
- Amicable Settlement 67.2** Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 67.1, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, even if no attempt at amicable settlement thereof has been made.
- Arbitration 67.3** Any dispute in respect of which:
- (a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 67.1, and
  - (b) amicable settlement has not been reached within the period stated in Sub-Clause 67.2,
- shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.
- Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 67.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.
- Arbitration may be commenced prior to or after completion of the Works,

provided that the obligations of the MDA, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

**Failure to Comply with Engineer's Decision 67.4**

Where neither the MDA nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-Clauses 67.1 and 67.2 shall not apply to any such reference.

### Notices

**Notice to Contractor 68.1**

All certificates, notices or instructions to be given to the Contractor by the MDA or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose.

**Notice to MDA and Engineer 68.2**

Any notice to be given to the MDA or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Part II of these Conditions.

**Change of Address 68.3**

Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

### Default of MDA

**Default of MDA 69.1**

In the event of the MDA:

(a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10, within which payment is to be made, subject to any deduction that the MDA is entitled to make under the Contract,

(b) interfering with or obstructing or refusing any required approval to the issue of any such certificate,

(c) becoming Agencyrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or

(d) giving notice to the Contractor that for unforeseen economic reasons it is impossible for him to continue to meet his contractual obligations, the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the MDA, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

**Removal of Contractor's Equipment 69.2**

Upon the expiry of the 14 days' notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.

**Payment on Termination 69.3**

In the event of such termination the MDA shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65, but, in addition to the payments specified in Sub-Clause 65.8, the MDA shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

**Contractor's Entitlement to Suspend Work** 69.4 Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Sub-Clause 69.1, the Contractor may, if the MDA fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the MDA is entitled to make under the Contract, after giving 28 days' prior notice to the MDA, with a copy to the Engineer, suspend work or reduce the rate of work. If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the MDA and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the MDA.

**Resumption of Work** 69.5 Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause 69.4, and the MDA subsequently pays the amount due, including interest pursuant to Sub-Clause 60.10, the Contractor's entitlement under Sub-Clause 69.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

### **Changes in Cost and Legislation**

**Increase or Decrease of Cost** 70.1 There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.

**Subsequent Legislation** 70.2 If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the MDA.

### **Currency and Rates of Exchange**

**Currency restrictions** 71.1 If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Government or authorised Agency of the Government of the country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the MDA shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

**Rates of Exchange** 72.1 Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Works are to be executed.

**Currency Proportions 72.2**

Where the MDA has required the Tender to be expressed in a single currency but with payment to be made in more than one currency and the Contractor has stated the proportions or amounts of other currency or currencies in which he requires payment to be made, the rate or rates of exchange applicable for calculating the payment of such proportions or amounts shall, unless otherwise stated in Part II of these Conditions, be those prevailing, as determined by the Central Agency of the country in which the Works are to be executed, on the date 28 days prior to the latest date for the submission of tenders for the Contract, as has been notified to the Contractor by the MDA prior to the submission of tenders or as provided for in the Tender.

**Currencies of Payment for Provisional Sums 72.3**

Where the Contract provides for payment in more than one currency, the proportions or amounts to be paid in foreign currencies in respect of Provisional Sums shall be determined in accordance with the principles set forth in Sub-Clauses 72.1 and 72.2 as and when these sums are utilised in whole or in part in accordance with the provisions of Clauses 58 and 59.

**REFERENCE TO PART II**

As stated in the Foreword at the beginning of this document, the FIDIC Conditions comprise both Part I and Part II. Certain Clauses, namely Sub-Clauses 1.1 paragraph (a) (i) and (v), 5.1 (part), 14.1, 14.3, 68.2 and 70.1 must include additional wording in Part II for the Conditions to be complete. Other Clauses may require additional wording to supplement Part I or to cover particular circumstances or the type of work (dredging is an example).

Part II Conditions of Particular Application with guidelines for the preparation of Part II are printed in a separately bound document.

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Programme to be Submitted	14.1
Progress-Disruption of	6.3
Progress-Rate of	46.1
Protection of Environment	19.1
Provision to Indemnify Contractor	22.3
Provision to Indemnify MDA	22.2
Provisional Sums, Currencies of Payment	72.3
Provisional Sums, Definition	58.1
Provisional Sums, Production of Vouchers	58.3
Provisional Sums, Use of	58.2
Quality of Materials and Workmanship	36.1
Quantities	55.1
Rate of Progress	46.1
Rates of Exchange	72.1
Rates, Power of Engineer to Fix	52.2
Rectification of Loss or Damage	20.2
Reduction of Liquidated Damages	47.2
Re-export of Plant	54.4
Regulations, Statutes, etc., Compliance with	26.1
Rejection	37.4
Release from Performance	66.1
Remedies for Default of Contractor	63.1
Remedying of Defects	49.2
Remedying of Defects, Cost of	49.3
Remedy on Contractor's Failure to Insure	25.3
Removal of Contractor's Employees	16.2
Removal of Contractor's Equipment	69.2
Removal of Improper Work, Materials or Plant	39.1
Removal of Plant, etc.	65.7
Responsibility to Rectify Loss or Damage	20.2
Responsibility Unaffected by Approval	7.3
Restriction on Working Hours	45.1
Resumption of Work	69.5
Retention Money, Payment of	60.3
Returns of Labour and Contractor's Equipment	35.1
Revised Programme	14.2
Rights of Way and Facilities	42.3
Risks, MDA's	20.4
Risks, Special	65.
Roads, etc., - Damage by Extraordinary Traffic	30.1

Roads, Interference with Access to	29.1
Royalties	28.2
Safety, Security and Protection of the Environment	19.1
Samples, Cost of	36.2
Security, Safety and Protection of the Environment	19.1
Setting-Out	17.1
Singular and Plural	1.4
Site, Clearance on Completion	33.1
Site, Contractor to Keep Clear	32.1
Site, Inspection of by Contractor	11.1
Site Operations and Methods of Construction	8.2
Site, Possession of	42.1
Special Risks	65
Staff, Engagement of	34.1
Statement at Completion	60.5
Statement, Final	60.6
Statutes, Regulations, etc. - Compliance with	26.1
Subcontracting	4.1
Subcontractors, Nominated	59
Subcontractors, Responsibility of the Contractor for Acts and Default of	4.1
Subsequent Legislation	70.2
Substantial Completion of Sections or Parts	48.3
Sufficiency of Tender	12.1
Supply of Plant, Materials and Labour	8.1
Surfaces Requiring Reinstatement	48.4
Suspension, Engineer's Determination	40.2
Suspension lasting more than 84 days	40.3
Suspension of Work	40.1
Taking Over Certificate	48.1
Taking Over of Sections or Parts	48.2
Tender Documents	11.1
Tender, Sufficiency of	12.1
Termination of Contract by MDA	63.1
Termination of Contract by MDA, Assignment of Benefit	63.4
Terms of Insurance	25.1
Tests, Cost of	36.3
Tests not Provided for - Cost of	36.4
Third Party Insurance	23.1
Time for Completion	43.1
Time for Completion, Extension of	44.1
Time for Payment	60.10
Traffic, Extraordinary	30.1
Traffic, Interference with	29.1
Traffic, Waterborne	30.4
Transport of Contractor's Equipment and Temporary Works	30.2
Transport of Materials and Plant	30.3
Uncovering Work and Making Openings	38.2
Unfulfilled Obligations	62.2
Urgent Remedial Work	64.1
Valuation at Date of Termination by the MDA	63.2
Variations	51.1
Variations, Daywork Basis	52.4
Variations, Exceeding 15 per cent	52.3
Variations, Instructions for	51.2
Variations, Power of the Engineer to Fix Rates	52.2
Variations, Valuation of	51.3
Vouchers, Production of	58.3

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War, Outbreak of	20.4
Watching and Lighting, etc.	19.1
Waterborne Traffic	30.4
Work, Examination of Before Covering Up	38.1
Work, Improper, Removal of	39.1
Working Hours, Restriction of	45.1
Workmanship, Quality of	36.1
Workmen, Accident or Injury to	24.1
Works, Care of	20.1
Works, Completion of (Defects Liability Certificate)	62.1
Works, Commencement of	41.1
Works, Insurance of	21.1
Works, Remedying of Defects	49.2
Works, Time for Completion of	43.1
Works to be Measured	56.1
Work, Suspension of	40.1
Work to be in Accordance with the Contract	13.1

**TENDER****NAME OF CONTRACT:** \_\_\_\_\_**TO** \_\_\_\_\_

Gentlemen,

1. Having examined the Conditions of Contract, Specification, Drawings, and Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) and Addenda Nos \_\_\_\_\_ for the execution of the above-named Works, we, the undersigned, offer to execute and complete such Works and remedy any defects therein in conformity with the Conditions of Contract, Specification, Drawings, Bill of Quantities and Addenda for the sum of  
\_\_\_\_\_  
\_\_\_\_\_  
( \_\_\_\_\_ )  
or such other sum as may be ascertained in accordance with the said Conditions.
2. We acknowledge that the Appendix forms part of our Tender.
3. We undertake, if our Tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Tender.
4. We agree to abide by this Tender for the period of \* \_\_\_\_\_ days from the date fixed for receiving the same and it shall remain binding upon us and maybe accepted at any time before the expiration of that period.
5. Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.
6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
 Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_  
 duly authorised to sign tenders for and on behalf of \_\_\_\_\_

**(IN BLOCK CAPITALS)**

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

(Note: All details marked \* shall be inserted before issue of Tender documents.)

## Appendix

### Sub – Clause

Amount of security (if any)_____	10.1	_____ per cent of the Contract Price
Minimum amount of third party insurance_____	23.2	_____ per occurrence, with the number of occurrences unlimited
Time for issue of notice to commence_____	41.1	_____ days
Time for Completion_____	43.1	_____ days
Amount of liquidated damages_____	47.1	_____ per day
Limit of liquidated damage_____	47.1	_____
Defects Liability Period_____	49.1	_____ days
Percentage for adjustment of Provisional Sums	59.4(c)	_____ per cent
Percentage of invoice value of listed materials and Plant_____	60.1(c)	_____ per cent
Percentage of Retention _____	60.2	_____ per cent
Limit of Retention Money _____	60.2	_____
Minimum Amount of Interim Payment Certificates_____	60.2	_____
Rate of interest upon unpaid sums_____	60.10	_____ per cent per annum
Initials of Signatory of Tender _____		

(Notes: All details in the list above, other than percentage figure against Sub-Clause 59.4, shall be inserted before issue of Tender documents. Where a number of days is to be inserted, it is desirable, for consistency with the Conditions, that the number should be a multiple of seven.

Additional entries are necessary where provision is included in the Contract for:

- (a) completion of Sections (Sub-Clauses 43.1 and 48.2(a))
- (b) liquidated damages for Sections (Sub-Clause 47. 1)
- (c) a bonus (Sub-Clause 47.3 - Part II)
- (d) payment for materials on Site (Sub-Clause 60. 1 (c))
- (e) payment in foreign currencies (Clause 60 - Part II)
- (f) an advance payment (Clause 60 - Part II)
- (g) adjustments to the Contract Price on account of Specified Materials  
(Sub-Clause 70.1 - Part 11)
- (h) rates of exchange (Sub-Clause 72.2 - Part II)

## Agreement

**This Agreement** made the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Between \_\_\_\_\_

Of \_\_\_\_\_

(hereinafter called "the MDA") of the one part and

\_\_\_\_\_ of \_\_\_\_\_

(hereinafter called "the Contractor") of the other part

Whereas the MDA is desirous that certain Works should be executed by the Contractor, viz \_\_\_\_\_

and has accepted a Tender by the Contractor for the execution and completion of such Works and the remedying of any defects therein

**Now this Agreement witnesseth** as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
  - (a) The Letter of notification of award;
  - (b) The said Tender;
  - (c) The Conditions of Contract (Parts I and II);
  - (d) The Specification;
  - (e) The Drawings; and
  - (f) The Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).
3. In consideration of the payments to be made by the MDA to the Contractor as hereinafter mentioned the Contractor hereby covenants with the MDA to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The MDA hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

**In Witness** whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

The Common Seal of \_\_\_\_\_

\_\_\_\_\_ was hereunto affixed in the presence of:-

or

Signed Sealed and Delivered by the

said \_\_\_\_\_

in the presence of:



## EDITORIAL AMENDMENTS IN 1988

Following publication of the Fourth Edition in 1987 of the Conditions of Contract for Works of Civil Engineering Construction, a number of editorial amendments were agreed by FIDIC. The amendments were incorporated during a 1988 reprinting and the list below clarifies the differences between the 1988 reprint and the original document.

<b>Foreword</b>		The last sentence of the first paragraph previously read “The Conditions are equally suitable for use on domestic contracts. “
<b>Page 6</b>		Sub-Clause 10.1. A comma has been inserted after the word “Contract” in the second line.  The third sentence previously read “Such security shall be in such form as may be agreed between the MDA and the Contractor.”
<b>Page 11</b>		Sub-Clause 22.1 (b) was previously one complete paragraph, ie there was no space between the words “...other than the Works), “and the remainder of the Sub-Clause.
<b>Page 15</b>		Sub-Clause 31.2 (c) was previously one complete paragraph, ie there was no space between the words “... nature for any such,” and the remainder of the Sub-Clause.
<b>Page 20</b>		Sub-Clause 44.3. The penultimate sentence was previously, “In both such cases the Engineer shall notify the Contractor accordingly, with a copy to the MDA. “
<b>Page 21</b>		Sub-Clause 49.1 (a). The word “substantil” has been deleted.
<b>Page 29</b>		Sub-Clause 60.3 (b) was previously two paragraphs, the second beginning with the words “Provided also that if at such time ...”
<b>Page 30</b>		Sub-Clause 60.5. The word “The” has been inserted at the beginning of the final paragraph.
<b>Page 35</b>		Sub-Clause 67. 1. In the eighth line of the third paragraph, a comma has been inserted after the word "provided". In the second line of the fourth paragraph, the word “notice” replaces the word “notification”.
<b>Page 38</b>		Reference to Part II. In the third line, the words “and (iv)” have been inserted after paragraph (a) (i).
<b>Tender Item 3.</b>		The word “Works” has been capitalised.
<b>Agreement</b>		
<b>Line 4</b>		Inverted commas have been inserted following the words “the MDA”.
<b>Line 6</b>		Inverted commas have been inserted before the word "the" instead of before the word “Contractor”.
<b>Line 8</b>		The word “Contractor” has been capitalised.
<b>Line 9</b>		The words “Tender by the Contractor” were previously “Tender by Contractor”.
<b>Line 11</b>		The word “Agreement” has been capitalised.
<b>Last lines</b>		The Agreement previously ended with the words “Binding Signature of MDA” and “Binding Signature of Contractor”.

## FURTHER AMENDMENTS IN 1992

The following amendments have been made to the 1988 Reprint of the Fourth Edition of the Conditions of Contract for Works of Civil Engineering Construction. The amendments of the 1988 Reprint are shown on the previous page. In addition, some minor changes in the use of punctuation marks (commas, semicolons, colons and stops), as well as the use of the words “or” and “and” have been introduced to attain uniformity in the style of all Clauses. These minor changes which improve the style, but which have no effect on the meaning of Clauses, have not been listed below.

### FOREWORD

The eighth paragraph previously referred to the anticipated publication of the “Guide to the Use of FIDIC Conditions of Contract for Works of Civil Engineering Construction”.

- Page 2** Sub-Clause 1. 1, sub-para (e). Definitions (iii) “Interim Payment Certificate” and (iv) “Final Payment Certificate” have been added.
- Page 6** Sub-Clause 8. 1. Second paragraph has been added.
- Page 7** Sub-Clause 12.2. Marginal note. The word "Adverse" has been changed to read “Not Foreseeable” (also amended in the Contents and the Index).
- Page 8** Sub-Clause 13. 1. Last sentence has been shortened by deleting the words “or, subject to the provisions of Clause 2, from the Engineer’s Representative.”, and adding the words “(or his delegate)”.
- Sub-Clause 15. 1, para 1. Last sentence has been shortened by placing a full stop after the word “Engineer”, deleting the words “ or subject to the provisions of Clause 2, the Engineer’s Representative.”
- Page 10** Sub-Clause 2 1. 1, sub-para (a). The words “(the term “cost” in this context shall include profit)” have been added.
- Page 11** Sub-Clause 21.4, sub-para (a). The word “where” has been corrected to read “whether”.
- Page 18** Sub-Clause 40.3. The word “written” has been deleted at the end of the first line.
- Page 19** Sub-Clause 42.3. The word “wayleaves” has been changed to read “rights of way” in the text and marginal note (also amended in the Contents and the Index).
- Page 29** Sub-Clause 60. 1, sub-para (e). The words “or otherwise” have been added at the end Sub-Clause 60.2. The words “certify to the MDA” have been changed to read “deliver to the MDA an Interim Payment Certificate stating”, the word “thereof” has been changed to read “of such statement” and the word “he” has been changed to read “the Engineer”. Sub-para (b). The words “Interim Certificates” have been changed to read “Interim Payment Certificates”. Sub-Clause 60.3, sub-para (b). In the eighth line, the word “ordered” has been changed to read “instructed”. Sub-Clause 60.4. The words “interim certificate” in the first and fourth lines, and the word “certificate” in the second line, have been changed to read “Interim Payment Certificate”.
- Page 30** Sub-Clause 60.5. In the second line, after the word “Engineer”, the words “six copies of” have been added.
- Sub-Clause 60.6. In the second line, after the word “consideration”, the words “six copies of “have been added. Sub-para (b). The words “or otherwise” have been added at the end. At the end of the sub-clause, the final paragraph has been added.
- Sub-Clause 60.7 and Sub-Clause 60.8 (text and marginal note). The words “Final Certificate” have been changed to read “Final Payment Certificate” (also amended in the Contents and the Index).

		Sub-Clause 60.8 (a). The words “or otherwise” have been added. Sub-Clause 60.8 (b). The words “under the Contract other than Clause 4V have been changed to read “other than under Clause 47.
<b>Page</b>	<b>31</b>	Sub-Clause 60.10. In the first and fourth lines, the words “interim certificate” have been changed to read “Interim Payment Certificate”. In the fifth and sixth lines, the words “Final Certificate” have been changed to read “Final Payment Certificate”. The words “or otherwise” have been added at the end.
	<b>Page 33</b>	Sub-Clause 65.6. In the ninth line, the words "and to the operation of Clause 67 have been changed to read “and Clause 67”.
	<b>Page 34</b>	Sub-Clause 66. 1. In the second line the word “party” has been changed to read “or both Parties”, in the third line between the words “his” and “contractual” the words “or their” have been added. In the fourth line after the word “then”, the words “the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and “ have been added.
	<b>Page 35</b>	Sub-Clause 67.2. The words “arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably” have been changed to read “ the parties shall attempt to settle such dispute amicably before the commencement of arbitration.” The words "whether or not any attempt at amicable settlement thereof has been made" have been changed to read “even if no attempt at amicable settlement thereof has been made”.
	<b>Page 37</b>	Sub-Clause 69.1, Sub-para (d). The words “unforeseen reasons, due to economic dislocation” have been changed to read “unforeseen economic reasons”. Sub-Clause 69.4. In the second line of the second paragraph, the word “cost” has been changed to read “costs”.
	<b>Page 38</b>	REFERENCE TO PART II. In the third line, the words “5.1 part” have been changed to read “5.1 (part)”.
<b>TENDER</b>		Paragraph 1. In the last line, the word “sums” has been changed to read “sum”.
<b>Appendix</b>		In the ninth line, the words “and Plant” have been added. In the twelfth line, the word "Payment has been added. In the thirteenth line, the words "per annum" have been added.
<b>EDITORIAL AMENDMENTS</b>		For page 3 5, after the words “Sub-Clause 67. 1” the first sentence has been inserted.



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## SECTION V. PART II: CONDITIONS OF PARTICULAR APPLICATION (COPA)

### Notes on the Conditions of Particular Application

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The following clauses are intended for use by the MDA in preparing the Conditions of Particular Application (Part II). Use them instead of the Particular Conditions published by FIDIC. **They are not a complete standard set of Part II provisions;** country- or Project-specific provisions for Part II must also be prepared in each case. However, standard, country-specific Conditions of Particular Application should be developed.

The provisions of Part II complement the General Conditions of Contract (Part I), specifying contractual requirements linked to the special circumstances of the country, the MDA, the Engineer, the sector, the overall project, and the contract Works. In preparing Part II, check that you have done the following:

- (a) **Incorporated essential information to complete the provisions of Part I** (without which Part I would be incomplete), e.g., in Sub-Clauses 1.1, subparas. (a) (i) and (iv); 5.1; 14.1; 14.3; 68.2; and 70.1.
- (b) **Added information referred to in the respective provisions of Part I as an option**, e.g., in Sub-Clauses 2.1, para. (b); 5.1; 21.1, para. (b); and 72.2.
- (c) **Amended and/or supplemented the provisions of Part I** as required or recommended by the Agency or as necessitated by the circumstances of the specific Works.

The Appendix to Bid in Section VII complements COPA in a manner similar to the way in which the Bidding Data complement the Instructions to Bidders.

Whoever drafts Part II should be thoroughly familiar with the provisions of Part I and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones. Note that the **Part II provisions take precedence over those in Part I.**

The origin of the clauses of Part II is shown by the following notations in the margin, to the left of the text:

- (WB)** denotes clauses drafted by the Agency; and
- (F)** denotes clauses drawn verbatim from the **FIDIC Conditions of Contract for Works**, fourth edition, 1987, reprinted in 1992 with further amendments, Parts I and II.
- (\*)** An **asterisk** below the above notations indicates that **explanations for any differences** in text from the FIDIC Conditions are given in the Section XI, Notes and Additional Clauses to Section IV, at the end of this book.

Several clauses **must be incorporated** in Part II for contracts financed from Agency funds. They are marked **(M) (for “Mandatory”)** next to the indication of origin. Other clauses, without being mandatory, are normally incorporated in Part II. They are marked **(R) (for “Recommended”)**. Use of the remaining clauses is **“Optional” (O)**, and they are accordingly marked; where appropriate, those clauses may be incorporated in Part II or adapted to suit the specific circumstances of each Contract. In sum,

**(M) Mandatory**

**(R) Recommended**

**(O) Optional**

Clause numbers in Part II correspond to those in Part I, except for clauses with numbers higher than 72 for which there are no counterparts in Part I.

Special consideration must be given to Part II where dredging and certain types of reclamation work are involved. For this reason, the fourth edition of the FIDIC Conditions of Contract, reprinted in 1992, contains a number of applicable clauses that, for convenience, have not been reprinted here. If required, they can be drawn directly from Part II of the FIDIC document, specifically Sub-Clauses 11.1, 12.2, 18.1, 19.1, 28.2, 40.1, 40.3, 45.1, 49.5, 50.2, and 51.1.

## Part II: Conditions of Particular Application

### Definitions and Interpretation

- Sub-Clause 1.1**  
Definitions
- (WB-M) (a) The “Agency” includes the International Agency for Reconstruction and Development (AGENCY) and the International Development Association (IDA).
- (F-M) (a) (i) The MDA is the party stipulated in the Appendix to Bid.
- (F-M) (a) (iv) The Engineer is the party stipulated in the Appendix to Bid.
- (WB-M) Amend Subpara. (a) (iv) also by adding the following (\*) words after the word “Conditions”:
- “or any other competent person appointed by the MDA, and notified to the Contractor, to act in replacement of the Engineer.”
- (WB-R) Amend Subpara. (b) (v) of Sub-Clause 1.1 by adding the following words at the end:
- “The word ‘tender’ is synonymous with ‘bid,’ and the words ‘Appendix to Tender’ with ‘Appendix to Bid,’ and the words ‘tender documents’ with ‘bidding documents.’”

### Engineer and Engineer’s Representative

- Sub-Clause 2.1**  
Engineer’s  
Duties and  
Authority<sup>1</sup>
- (WB-O) With reference to Sub-Clause 2.1 (b), the following \* provision shall also apply:
- The Engineer shall obtain the specific approval of the MDA before taking any of the following actions specified in Part I:
- (a) consenting to the subletting of any part of the Works

<sup>1</sup> The circumstances, if any, under which the Engineer should seek the specific approval of the LSG should be defined in this sub-clause. Some LSGs may wish not to include this optional clause, or to delete certain actions indicated in the example clause; other LSGs may wish to add more actions relating to payment, delays, completion, etc., such as those under Clauses 40, 42, 48, 49, 58, 65, and 70. LSGs should note that the Loan Agreement between the Bank and the borrowing country may require consultation before any substantial changes are made in the contract, e.g., normally any increase in cost by more than 15 percent or any extension of the Time for Completion by more than one month.

under Clause 4;

- (b) certifying additional cost determined under Clause 12;
- (c) determining an extension of time under Clause 44;
- (d) issuing a variation under Clause 51, except:
  - (i) in an emergency situation, as reasonably determined by the Engineer; or
  - (ii) if such variation would increase the Contract Price by less than the amount stated in the Appendix to Bid; or
- (e) fixing rates or prices under Clause 52.

Note: In the absence of the above Subpara. 2.1 (d) (i), if the obligation to obtain the approval of the MDA could lead to the Engineer's being unable to take action in an emergency, where matters of safety are involved, an additional provision may be necessary at the end of this sub-clause:

- (F-R) “Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the MDA, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the MDA.



## Contract Documents

- |                                |        |   |  |
|--------------------------------|--------|---|--|
| <b>Sub-Clause 5.1</b>          | (F-M)  | (a)   | The language is stipulated in the Appendix to Bid.                                       |
| Language and Law               | (F-M)  | (b)   | The law is that in force in the country stipulated in the Appendix to Bid.               |
| <b>Sub-Clause 5.2</b>          | (WB-M) | Delete the documents listed 1–6 and substitute: |  |
| Priority of Contract Documents | (*)    |   |  |
|                                |        | (1)   | the Contract Agreement (if completed);   |
|                                |        | (2)   | the Letter of notification of award;   |
|                                |        | (3)   | the Bid and the Appendix to Bid;   |
|                                |        | (4)   | the Conditions of Contract, Part II;   |
|                                |        | (5)   | the Conditions of Contract, Part I;  |
|                                |        | (6)   | the Technical Specifications;  |
|                                |        | (7)   | the Drawings;  |
|                                |        | (8)   | the priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME); and |
|                                |        | (9)   | other documents, as listed in the Appendix to Bid.                                       |

## General Obligations

- |                        |        |   |
|------------------------|--------|---|
| <b>Sub-Clause 10.1</b> | (WB-M) | Replace the text of Sub-Clause 10.1 with the following:   |
| Performance Security   | (*)    |   |
|                        |        | <p>“The Contractor shall provide security for his proper performance of the Contract to the MDA within 28 days after the receipt of the Letter of notification of award. The performance security shall be in the form of a Bank guarantee or performance bond, as stipulated by the MDA in the Appendix to Bid. The performance security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. The Contractor shall notify the Engineer when providing the performance security to the MDA.</p> <p>“If the performance security is a Bank guarantee, it shall be issued either (a) by a Agency located in the country of the MDA or a foreign Agency through a correspondent Agency located in the country of the MDA, or (b) directly by a foreign Agency that has been determined in advance to be acceptable to the MDA.</p> <p>“If the performance security is a performance bond, it shall be issued by a bonding or insurance company acceptable to the MDA.</p> |

“Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer’s written request, shall promptly increase the value of the performance security in that currency by an equal percentage. The performance security of a joint venture shall be in the name of the joint venture.”

- |   |                |  |
|---|----------------|--|
| <b>Sub-Clause 10.2</b><br>Period of<br>Validity of the<br>Performance<br>Security | (WB-M)         | The performance security shall be valid until a date 28 days from the date of issue of the Taking-Over Certificate in the case of a Bank guarantee, and one year from such date of issue in the case of a performance bond. The security shall be returned to the Contractor within 14 days of expiration.   |
| <b>Sub-Clause 10.3</b><br>Claims under<br>Performance<br>Security                 | (WB-R)<br>(* ) | Note: While not making this a mandatory requirement for contracts financed by it, the Agency strongly advises MDAs to consider deleting Sub-Clause 10.3.   |
| <b>Sub-Clause 10.4</b><br>Cost of<br>Performance<br>Security                      | (WB-M)         | Add the following Sub-Clause 10.4:<br><br>The cost of complying with the requirements of this clause shall be borne by the Contractor.   |
| <b>Sub-Clause 11.2</b><br>Access to Data  | (F-R)<br>(* )  | Note: Where the bulk or complexity of the data, for reasons of security enforced by the country where the Works are to be executed, makes it impracticable for the MDA to make all data available with the bidding documents and inspection of some data by the Contractor at an office is therefore expected, it would be advisable to make the circumstances clear in a new Sub-Clause 11.2: |

Add new Sub-Clause 11.2:

“Data made available by the MDA in accordance with Sub-Clause 11.1 shall be deemed to include data listed elsewhere in the Contract as open for inspection at the address stipulated in the Appendix to Bid.”

<b>Sub-Clause 14.1</b> Program to Be Submitted	(F-M)	“The time within which the program shall be submitted shall be the number of days stipulated in the Appendix to Bid.”
<b>Sub-Clause 14.3</b> Cash Flow Estimate to Be Submitted	(F-M)	“The time within which the detailed cash flow estimate shall be submitted shall be the number of days specified in the Appendix to Bid.”
<b>Sub-Clause 15.2</b> Language Ability of Contractor’s Representative	(F-R)	Add the following Sub-Clause 15.2:  “If the Contractor’s authorized representative is not, in the opinion of the Engineer, fluent in the language specified in the Appendix to Bid, the Contractor shall have available on site at all times a competent interpreter to ensure the proper transmission of instructions and information.”
<b>Sub-Clause 16.3</b> Language Ability of Superintending Staff	(F-R)	Add the following Sub-Clause 16.3:  “A reasonable proportion of the Contractor’s superintending staff shall have a working knowledge of the language specified in the Appendix to Bid, or the Contractor shall have available on site at all times a sufficient number of competent interpreters to ensure the proper transmission of instructions and information.”
<b>Sub-Clause 16.4</b> Employment of Local Personnel	(F-O)	Note: Where the MDA wishes to encourage the Contractor to engage local staff and labor, the following Sub-Clause 16.4 may be inserted:  “The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the country of the MDA stipulated in the Appendix to Bid.” <sup>2</sup>

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<sup>2</sup> Restrictions on bidders/contractors regarding the sources of inputs to a Works contract reduce the competitive potential and may affect adversely the economy and efficiency requirements of project execution. The Bank will therefore not accept bidding or contractual conditions containing restrictions on sources of staff and labor, except for unskilled labor.

Bidders/contractors should have the option to recruit staff and skilled personnel (engineers, technicians, craftsmen, foremen, etc.) from any source. Unskilled labor only might be restricted to sources within the LSG’s country, provided suitable candidates are available.

**Sub-Clause 19.1**  
Safety,  
Security, and  
Protection of  
the  
Environment

Note: MDAs should note that the Fund Agreement between the Agency and the borrowing country may establish specific measures to be taken during construction of the Works for the protection of the environment. Sub-Clause 19.1 should be written to take into account such specific measures.

**Sub-Clause 20.4**  
MDA's Risks

(WB-M) Amend Sub-Clause 20.4 to read as follows:  
(\* )

The MDA's risks are

- (a) insofar as they directly affect the execution of the Works in the country where the Permanent Works are to be executed:
  - (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
  - (ii) rebellion, revolution, insurrection, military or usurped power, or civil war;
  - (iii) ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - (iv) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
  - (v) riot, commotion, or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the MDA of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and

- (d) any operation of the forces of nature (insofar as it occurs on the Site) that an experienced contractor:
  - (i) could not have reasonably foreseen, or
  - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:
    - (A) prevent loss or damage to physical property from occurring by taking appropriate measures, or
    - (B) insure against such loss or damage.

**Clauses 21, 23,  
and 25**

Insurances  
Arranged by  
MDA

(F-O)  
(\* )

Note: Sample sub-clauses for a Contract where the MDA arranges for insurances are given in the Notes and Additional Clauses to Section IV at the end of this book.

**Sub-Clause 21.1**

Insurance of  
Works and  
Contractor's  
Equipment

(WB-M)

Add the following words at the end of sub-para. (a) and immediately before the last word of sub-para. (b) of Sub-Clause 21.1:

“it being understood that such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred,”

**Sub-Clause 21.2**

Scope of Cover

(WB-M)  
(\* )

Amend sub-para. (a) of Sub-Clause 21.2 by deleting the words “from the start of work at the Site” and by substituting therefore the words “from the first working day after the Commencement Date.”

**Sub-Clause 21.2**

Scope of Cover

(WB-M)

Add the following as Sub-Clause (c) under Sub-Clause 21.2:

- (c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.

<b>Sub-Clause 21.4</b> Exclusions	(WB-M)	Amend Sub-Clause 21.4 to read as follows:  “There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4 sub-paras. (a) (i) to (iv) of the Conditions of Particular Application.”
<b>Sub-Clause 25.1</b> Evidence and Terms of Insurances	(WB-M) (* )	Amend Sub-Clause 25.1 by inserting the words “as soon as practicable after the respective insurances have been taken out but in any case” before the words “prior to the start of work at the Site.”
<b>Sub-Clause 25.5</b> Source of Insurance	(WB-M) (* )	Add the following Sub-Clause 25.5:  “The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to in Clauses 21, 23, and 24) with insurers from any eligible source country as defined in the <i>Guidelines: Procurement under AGENCY Funds and IDA Credits</i> , which have been determined to be acceptable to the MDA.”
<b>Sub-Clause 26.2</b> Inspections and Audit by the Agency	(WB-M)	Add the following Sub-Clause 26.2:  The Contractor shall permit the Agency to inspect the Contractor’s accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Agency, if so required by the Agency.
<b>Labor</b>		
<b>Clauses 34 and 35</b> Labor	(WB-R) (* )	Note: Sample sub-clauses relevant to matters of detail in the hiring, housing, health, etc., of labor are given in the Notes and Additional Clauses to Section IV at the end of this book.

## Materials, Plant, and Workmanship

- Sub-Clause 36.1** (WB-O) Add the following paragraph at the end of Sub-Clause 36.1:  
 Quality of  
 Materials, Plant,  
 Supplies, and  
 Workmanship
- “The Contractor is encouraged, to the extent practicable and reasonable, to use materials, Contractor’s Equipment, Plant, and supplies from sources within the country of the MDA, as stipulated in the Appendix to Bid.”<sup>3</sup>

## Commencement and Delays

- Sub-Clause 43.1** (F-O) Note: Where completion is stated to be by a date and not  
 Time for  
 Completion
- within a period, Sub-Clause 43.1 should be amended, as follows:

Delete the words from “within the time” to “such extended time” and substitute “by the date or dates stated in the Appendix to Bid for the whole of the Works or the Section (as the case may be) or such later date or dates.”

- Sub-Clause 45.1** (F-O) Note: For a Contract located in an isolated area, where  
 Restriction on  
 Working Hours
- environmental restrictions do not apply, or where a Contract comprises work such as tunneling or pouring of concrete that may require continuous working, Sub-Clause 45.1 may be varied:

Delete Sub-Clause 45.1 and substitute:

“Subject to any provision to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on locally recognized days of rest.”

Note: The Contractor’s option may be further extended by substituting in place of the last three words:

- (F-O) “holidays or days of rest.”

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<sup>3</sup> As with the recruitment of personnel (Sub-Clause 16.4), restrictions on bidders/contractors regarding the sources of other inputs to a works contract reduce the competitive potential and may affect adversely the economy and efficiency requirements of project execution. The Bank, therefore, will not accept bidding or contractual conditions containing restrictions on sources of materials, Contractor’s Equipment, Plant, and supplies. Bidders/contractors should have the option to provide all inputs from any eligible source.

**Sub-Clause 47.3** (WB-O) Note: Where it is desired to make provision for the  
 Bonus for Early (\*) payment of a bonus for early completion of the  
 Completion whole Works or partial bonuses for completion of  
 key sections of the Works,<sup>4</sup> an additional Sub-  
 Clause 47.3 may be added. The amount to be  
 paid for bonus(es) should reflect a substantial  
 portion of the true net profit derived by the MDA  
 over the period by which completion was earlier  
 than scheduled. The amount of daily bonus  
 should normally be the same as the amount of  
 daily liquidated damages. A ceiling of total bonus  
 (say, 10 percent of Contract Price, as for liquidated  
 damages) may be inserted to discourage  
 unrealistically rapid Contract implementation by  
 the Contractor, which could adversely affect  
 overall performance. Where bonuses for  
 completion of Sections will apply, Clause 47  
 should be complemented with a table attached to  
 the Appendix to Bid, showing the dates of  
 completion and the amounts of liquidated  
 damages and bonus for each Section.

If the Contractor achieves completion of the Works or, if applicable, any Section thereof prior to the relevant time prescribed by Clause 43, the MDA shall pay to the Contractor the relevant sum stated in the Appendix to Bid as bonus for early completion, subject to the limit stated in the Appendix to Bid, for every calendar day that shall elapse between the date stated in a Taking-Over Certificate of the whole of the Works or the applicable Section, and the relevant time prescribed in Clause 43.

**Sub-Clause 48.5** (F-O) Note: Where it can be foreseen that, when the whole of  
 Prevention from the Works have been substantially completed, the  
 Testing Contractor may be prevented by reasons beyond  
 his control from carrying out the Tests on  
 Completion, an additional Sub-Clause 48.5 may  
 be added:

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the MDA or the Engineer or other contractors employed by the MDA are

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<sup>4</sup> Partial earlier completion may not always produce net benefits to the LSG, for example where utilization of the completed Works requires (a) the fulfillment of all parts of the Contract (e.g., the training of personnel); or (b) the completion of all Sections (e.g., in a hydroelectric power station, where early completion of the penstocks would not be useful if the powerhouse is still under construction); or (c) certain seasonal effects to take place (e.g., the onset of the rainy season, for impounding a reservoir); or (d) other circumstances. Also, a more rapid drawdown of budgeted funds may be required. All such factors should be considered prior to the inclusion of a bonus clause in the Contract.



responsible, the MDA shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly, provided always that the Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this sub-clause, the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days' notice.

Any additional costs to which the Contractor may be put, in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

### **Defects Liability**

**Sub-Clause 49.5**  
Extension of  
Defects  
Liability

(WB-O)  
(\* )

Note: For a Contract that includes a high proportion of Plant, an additional Sub-Clause 49.5 may be necessary:

The provisions of this clause shall apply to all replacements or renewals of Plant carried out by the Contractor to remedy defects and damages as if the replacements and renewals had been taken over on the date they were completed. The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected, the Defects Liability Period shall be extended only for that part. In neither case shall the Defects Liability Period extend beyond the number of years from the date of taking over, as specified in the Appendix to Bid.

When progress in respect of Plant has been suspended under Clause 40, the Contractor's obligations under this Clause shall not apply to any defects occurring more than the number of years stipulated in the Appendix to Bid after the Time for Completion established on the date of the Letter of notification of award.

### **Alterations, Additions, and Omissions**

- Sub-Clause 52.1** (WB-M) Note: Where provision is made in the Contract for  
Valuation of (\*) payment in foreign currency, Sub-Clause 52.1  
Variations shall be varied, as follows:

Add final sentences as follows:

“Where the Contract provides for the payment of the Contract Price in more than one currency, and varied work is valued at, or on the basis of, the rates and prices set out in the Contract, payment for such varied work shall be made in the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price. Where the Contract provides for payment of the Contract Price in more than one currency, and new rates or prices are agreed, fixed, or determined as stated above, the amount or proportion payable in each of the applicable currencies shall be specified when the rates or prices are agreed, fixed, or determined, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the actual or expected currencies of cost (and the proportions thereof) of the inputs of the varied work without regard to the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price.”

- Sub-Clause 52.2** (WB-M) Note: Where provision is made in the Contract for  
Power of (\*) payment in foreign currency, Sub-Clause 52.2  
Engineer to Fix shall be varied, as follows:  
Rates

Add a final sentence to the first paragraph, as follows:

“Where the Contract provides for the payment of the Contract Price in more than one currency, the amount or proportion payable in each of the applicable currencies shall be specified when the rates or prices are agreed, fixed, or determined as stated above, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the actual or expected currencies of cost (and the proportions thereof) of the inputs of the varied work without regard to the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price.”

- Sub-Clause 52.2** (F-R) Note: In addition, it is usually advisable to establish

Power of  
Engineer to Fix  
Rates

thresholds below which changes in rates or prices do not apply, by modifying Sub-Clause 52.2 as follows:

Add as a third paragraph:

“Provided further that no change in the rate or price for any item contained in the Contract shall be considered unless such item accounts for an amount more than 2 percent of the Contract Price, and the actual quantity of work executed under the item exceeds or falls short of the quantity set out in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) by more than 25 percent.”

**Sub-Clause 52.3**  
Variations  
Exceeding 15  
Percent

(WB-M) Add a final sentence, as follows:  
(\* )

“Where the Contract provides for the payment of the Contract Price in more than one currency, the amount or proportion payable in each of the applicable currencies shall be specified when such further sum is agreed or determined, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the currencies (and the proportions thereof) in which the Contractor’s Site and general overhead cost of the Contract were incurred without being bound by the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price.”

### **Contractor’s Equipment, Temporary Works, and Materials**

**Clause 54**  
Contractor’s  
Equipment,  
Temporary  
Works, and  
Materials

(WB-R) Note: The Agency recommends not to use Sub-Clauses  
(\* ) 54.2 and 54.5 of FIDIC Part II.

### **Measurement**

**Sub-Clause 55.2**  
Omissions of  
Quantities

(WB-M) Note: Sub-Clause 55.2 is added to reflect the warning in  
the Instructions to Bidders Sub-Clause 14.2 that bidders avoid omissions in pricing the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).

Items of the Works described in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the MDA.

### **Nominated Subcontractors**

<b>Clause 59</b> Materials and Plant Supplied by the MDA	(WB-R) (*)	Note: The Agency does not recommend the practice of the MDA supplying materials to the Contractor.  The supply of Plant by the MDA should be treated as a nominated subcontract, pursuant to Clause 59.
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### **Certificates and Payment**

Note: Alternative clauses are given for the cases where (A) the Contract Price is expressed entirely in local currency, with proportions thereof payable in a foreign currency or currencies and (B) where the Contract Price is expressed in amounts of local and foreign currencies.

#### **Alternative A**

To be used when the Contract Price is expressed in local currency, with proportions of the Contract Price payable in a foreign currency or currencies.

<b>Clause 60</b> Certificates and Payment	(WB-R) (*)	Clause 60 of the General Conditions is deleted and the following Sub-Clauses 60.1-60.14 are substituted therefore:
<b>Sub-Clause 60.1</b> Monthly Statements	(WB-R)	The Contractor shall submit a statement in the number of copies specified in the Appendix to Bid to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed: <ul style="list-style-type: none"> <li>(a) the estimated Contract value of the Temporary and Permanent Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in local currency;</li> </ul>

- (b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at the unit rates and prices included in the Contract, in local currency;
- (c) the estimated Contract value at the unit rates and prices included in the Contract of the Temporary and Permanent Works for the month in question, in local currency, obtained by deducting (b) from (a);
- (d) the equivalent of the amount set forth in (c), expressed in the various currencies in which the Contract Price is payable, and calculated by applying the proportions and the exchange rates set forth in the Appendix to Bid to the amount set forth in (c);
- (e) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of foreign and local currencies, pursuant to Clause 52;
- (f) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate, indicating the amounts of foreign and local currencies as determined from the Daywork Schedule of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME);
- (g) amounts reflecting changes in cost and legislation, pursuant to Clause 70, expressed in the relevant amounts of foreign and local currencies;
- (h) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts, in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (i) any amount to be withheld under the retention provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in foreign and local currencies due under Paragraphs 60.1 (d), (e), (f), and (g);
- (j) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.7;

and

- (k) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

**Sub-Clause 60.2**  
Monthly  
Payments

(WB-R) The said statement shall be approved or amended by the Engineer in such a way that, in his opinion, it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums that may have become due and payable by the Contractor to the MDA. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. **Within 14 days of receipt of the monthly statement referred to in Sub-Clause 60.1**, the Engineer shall determine the amounts due to the Contractor and shall deliver to the MDA and the Contractor an Interim Payment Certificate, certifying the amounts due to the Contractor.

(F-R)  
(\* ) The Engineer shall not be bound to certify any payment under this sub-clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Tender. However, in such case, the unpaid certified amount will be added to the next interim payment, and the cumulative unpaid certified amount will be compared to the minimum amount of interim payment.

Notwithstanding the terms of this clause or any other clause of the Contract, no amount will be certified by the Engineer for payment until the performance security has been provided by the Contractor and approved by the MDA.

**Sub-Clause 60.3**  
Materials and Plant  
for the Permanent  
Works

(WB-R) With respect to materials and Plant brought by the Contractor to the Site<sup>5</sup> for incorporation in the Permanent Works, the Contractor shall (a) receive a credit in the month in which these materials and Plant are brought to the Site and (b) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the Engineer in accordance with the following provisions:

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's

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<sup>5</sup> Where the Contractor has to supply large and costly items of Plant, the Bank's Standard Bidding Document (Supply and Installation) should be considered a more appropriate type of contract.

satisfaction:

- (i) the materials and Plant are in accordance with the specifications for the Works;
  - (ii) the materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage, or deterioration;
  - (iii) the Contractor's records of the requirements, orders, receipts, and use of materials and Plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
  - (iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and Plant to the Site, together with such documents as may be required for the purpose of evidencing such cost;
  - (v) the origin of the materials and Plant and the currencies of payment therefor are those indicated in the Appendix to Bid; and
  - (vi) the materials are to be used within a reasonable time.
- (b) the amount to be credited to the Contractor shall be the equivalent of 75 percent of the Contractor's reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the documents listed in subpara. (a) (iv) above;
  - (c) the amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials and Plant pursuant to subpara (b) above, as determined by the Engineer; and
  - (d) the currencies in which the respective amounts shall be credited or debited as set forth above shall be determined by the Engineer.

**Sub-Clause 60.4**  
Place of  
Payment

(WB-R) Payments to the Contractor by the MDA shall be made in the currencies in which the Contract Price is payable into a Agency account or accounts nominated by the Contractor.

- Sub-Clause 60.5** (WB-R) A retention amounting to the percentage stipulated in the Appendix to Bid of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 (i) shall be made by the Engineer in the first and following Interim Payment Certificates.
- Retention Money (\*)
- Sub-Clause 60.6** (F-R) Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one-half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor. The Contractor may substitute the remaining retention money with an on-demand Bank guarantee in a form, and from a source, acceptable to the MDA.
- Payment of Retention Money (\*)
- Upon the expiration of the Defects Liability Period for the Works, the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor (or return of the remaining security, which replaced the Retention Money). Provided that, in the event of different Defects Liability Periods being applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression “expiration of the Defects Liability Period” shall, for the purposes of this sub-clause, be deemed to mean the expiration of the latest of such periods.
- Provided also that if at such time, there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.
- Sub-Clause 60.7** (WB-R) The MDA will make an interest-free advance payment to the Contractor exclusively for the costs of mobilization in respect of the Works in an amount named in the Letter of notification of award, payable in the proportions of foreign and local currencies of the Contract Price, but in no event exceeding the amount stated in the Appendix to Bid. Payment of such advance amount will be due under separate certification by the Engineer after (a) execution of the Form of Agreement by the parties hereto; (b) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and (c) provision by the
- Advance Payment



Contractor of an unconditional Bank guarantee in a form and by a Agency acceptable to the MDA in amounts and currencies equal to the advance payment. Such Bank guarantee shall remain effective until the advance payment has been repaid pursuant to the paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this clause.

The advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this clause. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached the percentage of the Contract Price stipulated in the Appendix to Bid less Provisional Sums, and shall be made at the rate stated in the Appendix to Bid of the amount of all Interim Payment Certificates in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 80 percent of the Contract Price has been certified for payment.

**Sub-Clause 60.8**  
Time of  
Payment and  
Interest

(WB-M)  
(\* )

(a) The amount due to the Contractor under any Interim or Final Payment Certificate issued by the Engineer pursuant to this clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the MDA to the Contractor as follows:

(i) (A) in the case of Interim Payment Certificates, within 42 days after the Contractor's monthly statement has been submitted to the Engineer for certification, pursuant to Sub-Clause 60.1, provided that if the Engineer's Interim Certificate has not yet been issued within said 42 days, the MDA shall pay the amount shown in the Contractor's monthly statement and that any discrepancy shall be added to, or deducted from, the next payment to the Contractor; and

(B) in the case of any monthly statement submitted by the Contractor at a time when

the Agency's fund or credit (from which part of the payments to the Contractor are being made) is suspended, within 14 days after such monthly statement is submitted; provided that if the Engineer's Interim Certificate has not yet been issued within said 14 days, the MDA shall pay the amount shown in the Contractor's monthly statement and that any discrepancy shall be added to, or deducted from, the next payment to the Contractor.

(ii) (A) in the case of the Final Payment Certificate pursuant to Sub-Clause 60.13, within 84 days after the Final Statement and written discharge have been submitted to the Engineer for certification; and

(B) in the case of a Final Statement submitted by the Contractor at a time when the Agency's fund or credit (from which part of the payments to the Contractor are being made) is suspended or for which payment under (ii) (A) becomes due after 60 days of the date of notification of the suspension notice, payment will be made within 60 days after the date of notification of the suspension pursuant to Sub-Clause 69.6 (a), provided that if the Engineer's Final Payment Certificate has not been issued within the said 60 days, the MDA shall pay the undisputed amounts shown in the Final Statement.

(WB-R) (b) In the event of the failure of the MDA to make payment within the times stated, the MDA shall pay to the Contractor interest compounded monthly at the rate(s) stated in the Appendix to Bid upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due. The provisions of this sub-clause are without prejudice to the Contractor's entitlement under Clause 69 or otherwise.

(\*)

**Sub-Clause 60.9**  
Correction of  
Certificates

(F-R)  
(\*)

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate that has been issued by him,

and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

- Sub-Clause 60.10** (F-R) Not later than 84 days after the issue of the Taking-Over  
Statement at (\*) Certificate in respect of the whole of the Works, the  
Completion (\*) Contractor shall submit to the Engineer a Statement at  
Completion in the number of copies specified in the  
Appendix to Bid with supporting documents showing in  
detail, in the form approved by the Engineer,
- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate;
  - (b) any further sums which the Contractor considers to be due; and
  - (c) an estimate of amounts that the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.

- Sub-Clause 60.11** (F-R) Not later than 56 days after the issue of the Defects  
Final Statement (\*) Liability Certificate pursuant to Sub-Clause 62.1, the  
(\*) Contractor shall submit to the Engineer for consideration a  
draft final statement in the number of copies stipulated in  
the Appendix to Bid with supporting documents showing in  
detail, in the form approved by the Engineer,
- (a) the value of all work done in accordance with the Contract; and
  - (b) any further sums that the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").

- (WB-R) If, following discussions between the Engineer and the  
(\*) Contractor and any changes to the draft final statement that  
(\*) may be agreed between them, it becomes evident that a  
dispute exists, the Engineer shall deliver to the MDA an

Interim Payment Certificate for those parts of the draft final statement, if any, that are not in dispute. The dispute shall then be settled in accordance with Clause 67. The Final Statement shall be the agreed upon settlement of the dispute.

- |   |               |  |
|---|---------------|--|
| <b>Sub-Clause 60.12</b><br>Discharge                    | (F-R)<br>(* ) | Upon submission of the Final Statement, the Contractor shall give to the MDA, with a copy to the Engineer, a written discharge confirm/Companying that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.13 has been made and the performance security referred to in Sub-Clause 10.1 has been returned to the Contractor.               |
| <b>Sub-Clause 60.13</b><br>Final Payment Certificate    | (F-R)<br>(* ) | <p>Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall deliver to the MDA (with a copy to the Contractor) a Final Payment Certificate stating</p> <p>(a) the amount that, in the opinion of the Engineer, is finally due under the Contract or otherwise, and</p> <p>(b) after giving credit to the MDA for all amounts previously paid by the MDA and for all sums to which the MDA is entitled, other than under Clause 47, the balance, if any, due from the MDA to the Contractor or from the Contractor to the MDA as the case may be.</p> |
| <b>Sub-Clause 60.14</b><br>Cessation of MDA's Liability | (F-R)<br>(* ) | The MDA shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.10.  |

### **Alternative B**

**Note:** To be used when the Contract Price is expressed in the currencies of the origin (local and foreign) of the various inputs.

- Clause 60** (WB-R) Clause 60 of the General Conditions is deleted and the following Sub-Clauses 60.1–60.14 are substituted  
Certificates and Payment therefore:
- Sub-Clause 60.1** (WB-R) The Contractor shall submit a statement in the number of  
Monthly Statements copies stipulated in the Appendix to Bid to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:
- (a) the estimated contract value of the Temporary and Permanent Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price;
  - (b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price;
  - (c) the estimated contract value at the unit rates and prices included in the Contract of the Temporary and Permanent Works for the month in question, in the various currencies of the Contract Price, obtained by deducting (b) from (a);
  - (d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of foreign and local currencies, pursuant to Clause 52;
  - (e) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate, indicating the amounts of foreign and local currencies as determined from the Daywork Schedule of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME);
  - (f) amounts reflecting changes in cost and legislation,

pursuant to Clause 70, expressed in the relevant amounts of foreign and local currencies;

- (g) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (h) any amount to be withheld under the provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in foreign and local currencies due under Paragraphs 60.1 (c), (d), (e), and (f);
- (i) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.8; and
- (j) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

<b>Sub-Clauses 60.2 to 60.4</b>	(WB-R)	Note: [Use Sub-Clauses 60.2 to 60.4 of Alternative A.]
<b>Sub-Clause 60.5</b> Retention Money	(WB-R)	Note: [Use Sub-Clause 60.5 of Alternative A, substituting "Sub-Clause 60.1(h)" for "Sub-Clause 60.1(i)."]
<b>Sub-Clauses 60.6, 60.7, and 60.9 to 60.14</b>	(WB-R)	Note: [Use Sub-Clauses 60.6, 60.7, and 60.9 to 60.14 of Alternative A.]
<b>Sub-Clause 60.8 (a)</b>	(WB-M)	Note: [Use Sub-Clause 60.8 (a) of Alternative A.]
<b>Sub-Clause 60.8 (b)</b>	(WB-R)	Note: [Use Sub-Clause 60.8 (b) of Alternative A.]

## Remedies

<b>Sub-Clause 63.1</b>	(WB-R)	Delete the last paragraph of this sub-clause and substitute:
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Default of Contractor <sup>6</sup>	(*)	<p>“then the MDA may, after giving 14 days’ notice to the Contractor, enter upon the site and expel the Contractor there from without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the MDA or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The MDA or such other contractor may use for such completion so much of the Contractor’s Equipment, Plant, Temporary Works, and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper, and the MDA may, at any time, sell any of the said Contractor’s Equipment, Temporary Works, and unused Plant and materials, and apply the proceeds of sale in or toward the satisfaction of any sums due or that may become due to him from the Contractor under the Contract.”</p>
<b>Sub-Clause 63.2</b> Valuation at Date of Expulsion	(WB-R)	<p>Modify the heading of Sub-Clause 63.2 by substituting “Valuation at Date of Expulsion” for “Valuation at Date of Termination.” In Sub-Clause 63.2, delete the word “termination” on the second and fifth lines and substitute “expulsion.”</p>
<b>Sub-Clause 63.3</b> Payment after Expulsion	(WB-R)	<p>Modify the heading of Sub-Clause 63.3 by substituting “Payment after Expulsion” for “Payment after Termination.” In Sub-Clause 63.3, delete the words “terminates the Contractor’s employment” on the first line, and substitute “shall enter and expel the Contractor.”</p>
<b>Sub-Clause 63.4</b> Assignment of Benefit of Agreement	(WB-R)	<p>In Sub-Clause 63.4, delete the word “termination” on the second line, and substitute “expulsion.”</p>

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<sup>6</sup> In some countries, it is not possible for the LSG to enter upon the Site or into a new contract for completion of the Works until the Contract has been formally terminated. Sub-Clause 63.1 should be considered carefully in the light of local law. The text of Sub-Clauses 63.2, 63.3, and 63.4 (below) is linked to the above text of Sub-Clause 63.1.

**Sub-Clause 63.5** (WB-M) Add the following Sub-Clause 63.5:

Corrupt or  
Fraudulent  
Practices

If in the judgment of the MDA the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the MDA may, after having given 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 63 shall apply as if such expulsion had been made under Sub-Clause 63.1.

For the purpose of this sub-clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in Contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the MDA, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial noncompetitive levels and to deprive the MDA of the benefits of free and open competition.

### Special Risks

**Sub-Clause 65.2** (WB-M) Amend Sub-Clause 65.2 to read as follows: “The Special Risks are the risks defined under para. (a), subparas. (i) to (\*) of Sub-Clause 20.4.”

Special Risks

### Settlement of Disputes

**Clause 67** (WB-M) Sub-Clauses 67.1 through 67.4 set forth the procedure for Settlement of Disputes<sup>7</sup>

Settlement of  
Disputes<sup>7</sup>

<sup>7</sup> **Clause 67: Settlement of Disputes.** These Standard Bidding Documents include alternative versions of Sub-Clause 67.1, titled “Dispute Review Board” (Version 1) and “Disputes Review Expert” (Version 2), respectively. The LSG shall select one of the two versions to include in the final bidding documents (and delete the version that is not selected). In selecting between Version 1 and Version 2, the LSG should take into account the following considerations:

- (a) **Version 1** provides for disputes between the parties to be referred to a Disputes Review Board (“the Board”) consisting of three members. Version 1 is mandatory for contracts estimated to cost more than US\$50 million and for contracts referred to in the Procurement Schedule of the Loan Agreement.
- (b) **Version 2** is essentially identical to Version 1, except that it provides for such disputes to be referred to a single Disputes Review Expert (“DRE”).



**[SUB-CLAUSE 67.1—VERSION 1]****Sub-Clause 67.1**

Disputes  
Review Board

Delete Sub-Clause 67.1 and replace with the following:

“If any dispute arises between the MDA and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of the Contract,

including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate, or valuation of the Engineer, the matter in dispute shall, in the first place, be referred to the Disputes Review Board (“the Board”).

“The Board shall be established when each of the three Board Members has signed a Board Member’s Declaration of Acceptance as required by the DRB’s Rules and Procedures (which, along with the Declaration of Acceptance form, are attached to these Conditions of Particular Application).<sup>8</sup>

“The Board shall comprise three Members experienced with the type of construction involved in the Works and with the interpretation of contractual documents. One Member shall be selected by each of the MDA and the Contractor and approved by the other. If either of these Members is not so selected and approved within 28 days of the date of the Letter of notification of award, then upon the request of either or both parties such Member shall be selected as soon as practicable by the Appointing Authority specified in the Appendix to Bid.<sup>9</sup> The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf of the parties fail to select the third

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For contracts estimated to cost less than US\$50 million, the LSG may select either Version 1 or Version 2, depending on the LSG’s regulatory framework and preferences. Contracts smaller than US\$10 million should generally follow the *Standard Bidding Documents, Procurement of Works, Smaller Contracts*, which provide for a similar disputes review method (“the Adjudicator”).

<sup>8</sup> The DRB’s Rules and Procedures along with the Declaration of Acceptance form can be found in Section XIII of these Standard Bidding Documents.

<sup>9</sup> Name an appropriate international appointing authority, e.g., the Secretary-General of the Permanent Court of Arbitration, The Hague; the Secretary-General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the Chairman of the International Court of Arbitration of the International Chamber of Commerce, Paris; the President of the London Court of International Arbitration, etc. These officials are generally not obligated to act as appointing authority under rules other than those of their own institutions. It is thus strongly recommended that the designated official’s consent to act as appointing authority be obtained in advance. Parties should also be aware that some institutions may levy a charge for the performance of the appointing authority service.

Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, then upon the request of either or both parties such third Member shall be selected promptly by the same Appointing Authority specified in the Appendix to Bid who shall seek the approval of the proposed third Member by the parties before selection but, failing such approval, nevertheless shall select the third Member. The third Member shall serve as Chairman of the Board.

“In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member shall fail or be unable to serve, the Chairman (or failing the action of the Chairman then either of the other Members) shall inform the parties and such non serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the Appointing Authority in the same manner as described above. Replacement shall be considered completed when the new Member signs the Board Member’s Declaration of Acceptance. Throughout any replacement process the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the Board shall not conduct a hearing nor issue a Recommendation until the replacement is completed.

“Either the MDA or the Contractor may refer a dispute to the Board in accordance with the provisions of the DRB’s Rules and Procedures, attached to these Conditions of Particular Application.

“The Recommendation of the Board shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either the MDA or the Contractor is dissatisfied with any Recommendation of the Board, or if the Board fails to issue its Recommendation within 56 days after receipt by

the Chairman of the Board of the written Request for Recommendation, then either the MDA or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

“If the Board has issued a Recommendation to the MDA and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the MDA or the Contractor within 14 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon the MDA and the Contractor.

“Whether or not it has become final and binding upon the MDA and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

“All Recommendations that have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.”

***[END OF VERSION 1]***

***[SUB-CLAUSE 67.1—VERSION 2]***

**Sub-Clause 67.1**  
Disputes Review  
Expert

Delete Sub-Clause 67.1 and replace with the following:

“If any dispute arises between the MDA and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of the Contract,

including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate, or valuation of the Engineer, the matter in dispute shall, in the first place, be referred to the Disputes Review Expert ('DRE').

"The DRE shall take up his functions after having signed a DRE's Declaration of Acceptance as required by the DRE's Rules and Procedures (which along with the Declaration of Acceptance, are attached to these Conditions of Particular application).<sup>10</sup>

"The DRE shall be a person experienced with the type of construction involved in the Works and with the interpretation of contractual documents and shall be selected by agreement between the MDA and the Contractor. If the DRE is not selected within 28 days of the date of the Letter of notification of award, then upon the request of either or both parties the DRE shall be selected as soon as practicable by the Appointing Authority specified in the Appendix to Bid.<sup>11</sup>

"In the event of death, disability, or resignation of the DRE, the latter shall be replaced by agreement between the MDA and the Contractor. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the need for a replacement, failing which the replacement shall be made by the same international appointing authority as above.

"Either the MDA or the Contractor may refer a dispute to the DRE in accordance with the provisions of the DRE's Rules and Procedures, attached to these Conditions of Particular Application.

"The Recommendation of the DRE shall be binding on both parties, who shall promptly give effect to it unless and

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<sup>10</sup> The DRE's Rules and Procedures along with the Declaration of Acceptance form can be found in Section XIII of these Standard Bidding Documents.

<sup>11</sup> Name an appropriate international appointing authority, e.g., the Secretary-General of the Permanent Court of Arbitration, The Hague; the Secretary-General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the Chairman of the International Court of Arbitration of the International Chamber of Commerce, Paris; the President of the London Court of International Arbitration, etc. These officials are generally not obligated to act as appointing authority under rules other than those of their own institutions. It is thus strongly recommended that the designated official's consent to act as appointing authority be obtained in advance. Parties should also be aware that some institutions may levy a charge for the performance of the appointing authority service.

until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

“If either the MDA or the Contractor is dissatisfied with any Recommendation of the DRE, or if the DRE fails to issue his Recommendation within 56 days after he has received the written Request for Recommendation, then either the MDA or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

“If the DRE has issued a Recommendation to the MDA and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the MDA or the Contractor within 14 days after the parties received such Recommendation from the DRE, the Recommendation shall become final and binding upon the MDA and the Contractor.

“Whether or not it has become final and binding upon the MDA and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

“All Recommendations that have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.”

***[END OF VERSION 2]***

**Sub-Clause 67.2**

Sub-Clause 67.2 is deleted without a change in the numbering of the other sub-clauses of this Clause 67.

**Sub-Clause 67.3**  
Arbitration<sup>12</sup>

Sub-Clause 67.3 is deleted and replaced by the following Sub-Clauses 67.3.1 and 67.3.2:

**“67.3.1 Arbitration Proceedings**

“Any dispute in respect of which the Recommendation, if any, of the \_\_\_\_\_ [**“Board”** or **“DRE”**]<sup>13</sup> has not become final and binding shall be finally settled by arbitration in accordance with the rules of procedure designated in Sub-Clause 67.3.2 below. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, or valuation of the Engineer and any Recommendation(s) of the \_\_\_\_\_ [**“Board”** or **“DRE”**]<sup>14</sup> related to the dispute.

“Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the \_\_\_\_\_ [**“Board”** or **“DRE”**]<sup>15</sup> for the purpose of obtaining his Recommendation(s) pursuant to Sub-Clause 67.1. No Recommendation shall disqualify the \_\_\_\_\_ [**“any Board Member”** or **“DRE”**]<sup>16</sup> from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

“Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the MDA, the Engineer, the Contractor, and the \_\_\_\_\_ [**“Board”** or **“DRE”**]<sup>17</sup> shall not be altered by reason of the arbitration being conducted during the progress of the Works.

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<sup>12</sup> Where indicated in Sub-Clause 67.3.1, the LSG shall select the reference to the “Board” or “DRE” corresponding to the LSG’s selection between Version 1 (“Board”) and Version 2 (“DRE”) of Sub-Clause 67.1 (and delete the reference inapplicable to this Contract).

<sup>13</sup> Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

<sup>14</sup> Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

<sup>15</sup> Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

<sup>16</sup> Insert “any Board Member” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

<sup>17</sup> Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

“**67.3.2 Rules of Procedure**<sup>18</sup>

(a) Contracts with foreign contractors<sup>19</sup>

***United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:***

Sub-Clause 67.3.2 (a)—Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.<sup>20</sup>

***Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):***

Sub-Clause 67.3.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

***Rules of Arbitration Institute of the Stockholm Chamber of Commerce:***

Sub-Clause 67.3.2 (a)—Any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration

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<sup>18</sup> Since at the time of bidding it cannot be determined whether the Contractor will be foreign or domestic, the final **bidding documents** should contain one clause to be retained in the event of a Contract with a foreign Contractor and one clause to be retained in the event of a Contract with a domestic Contractor. **At the time of finalizing the Contract**, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to this Sub-Clause 67.3.2 in the **bidding documents**:

“Sub-Clause 67.3.2 (a) shall be retained in the case of a Contract with a foreign Contractor or Sub-Clause 67.3.2 (b) shall be retained in the case of a Contract with a domestic Contractor. The determination of whether a Contractor (as an individual firm or as a Joint Venture) is foreign or domestic for the purposes of this sub-clause, will be made by reference to the criteria set forth in Sub-Clauses 32.3 (a) (i) and 32.3 (a) (ii) or Sub-Clauses 32.3 (b) (i) and 34 (b) (ii) of the Instructions to Bidders, Preference for Domestic Bidders.”

<sup>19</sup> The LSG is invited to select rules to govern the arbitration proceedings from among the well-recognized rules of procedures listed in Sub-Clause 67.3.2 (a). Other rules might be acceptable, subject to the Bank’s prior concurrence. After the LSG makes its selection, the applicable clause shall be retained in the final bidding documents as Sub-Clause 67.3.2 (a) (and all other listed clauses deleted). The World Bank should not be named as arbitrator, nor should it be asked to name an arbitrator.

<sup>20</sup> The LSG may wish to consider adding:

- (i) The appointing authority shall be *[name of institution or person]*;
- (ii) The number of arbitrators shall be *[one or three]*;
- (iii) The place of arbitration shall be *[town or country]*;
- (iv) The language(s) to be used in the arbitral proceedings shall be *[language(s)]*.

Institute of the Stockholm Chamber of Commerce.

***Rules of the London court of International Arbitration:***

Sub-Clause 67.3.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.

(b) Contracts with domestic contractors:<sup>21</sup>

Sub-Clause 67.3.2 (b)—Any dispute between the MDA and a domestic Contractor arising in connection with the present Contract shall be referred to adjudication or arbitration in accordance with the laws of the MDA's country.

**Sub-Clause 67.4**

Failure to  
Comply with  
Recommendations

Delete Sub-Clause 67.4 and replace with the following:

“Where neither the MDA nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-Clause 67.1 shall not apply to any such reference.”

<sup>21</sup> This sample Sub-Clause 67.3.2 (b) shall be included in the bidding documents and shall be retained in the Contract in the event that award is made to a domestic Contractor.



## Notices

<b>Sub-Clause 68.2</b> Notice to MDA and Engineer	(F-M)	For the purposes of this sub-clause, the addresses are those specified in the Appendix to Bid.
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## Default of MDA

<b>Clause 69</b> Default of MDA	(WB-R)	In Sub-Clauses 69.1, 69.4, and 69.5, substitute “Sub-Clause 60.8” for “Sub-Clause 60.10.”
<b>Sub-Clause 69.1</b> <b>(d)</b> Economic Dislocation	(WB-M) (* )	Sub-Clause 69.1 (d) is deleted.
<b>Sub-Clause 69.3</b> Payment on Termination	(WB-M)	Delete from “, but in addition to the payments specified...” to the end of the sub-clause.
<b>Sub-Clause 69.4</b> Contractor’s Entitlement to Suspend Work	(WB-R)	Add this paragraph:  Without prejudice to the Contractor’s entitlement to interest under Sub-Clause 60.8 (of these conditions of Particular Application) and to terminate under Sub-Clause 69.1, the Contractor may suspend work or reduce the rate of work within 56 days after notification by the Agency to the MDA’s government that the Agency has suspended disbursements from its fund, which finances in whole or in part the execution of the Works.
<b>Sub-Clause 69.6</b> Suspension of World Agency Fund or Credit	(WB-M)	Add the following Sub-Clause 69.6:  In the event the Agency suspends the fund or credit from which part of the payments to the Contractor are being made:  (a) The MDA shall notify the Contractor, with copy to the Engineer, of such suspension within 7 days of having received the suspension notice from the World Agency, provided (i) that the MDA shall state in such notification whether sufficient funds in appropriate currencies are expected to be available to the MDA to continue making payments to the Contractor beyond a date 60 days after the date of Agency notification of

the suspension, and (ii) that, if such funds are not expected to be available, the MDA shall immediately instruct the Engineer to instruct the Contractor to suspend the progress of the Works pursuant to Sub-Clause 40.1.

- (b) If the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Paragraph 60.8 (a) (i) (B) for payments under Interim Certificates, the Contractor may, without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.8, immediately take one or both of the following actions, namely (i) suspend work or reduce the rate of work, and (ii) terminate his employment under the Contract by giving notice to the MDA, with copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

### **Changes in Cost and Legislation**

<b>Clause 70</b>	(WB-R)	Note:	In Works contracts financed in whole or in part by the Agency, it is mandatory to include price adjustment provisions if the contracts extend beyond 18 months (or even shorter periods in countries with high inflation rates). The method of price adjustment prescribed (i.e., the use of a formula) is for cases where official or proxy indices for the fluctuation of the prices of constructional inputs are available. Use of the "documentary evidence" method of price adjustment is discouraged and should be applied only in the rare cases where there are no official indices available and it is not possible to determine proxy indices. Use of the "documentary evidence" method will require different clauses, and care and diligence in the checking of base price documents and actual invoices submitted by the Contractor. If this document is used for a fixed-price contract, only Sub-Clause 70.8 should be retained (and renumbered) with the omission of the last sentence therein.
Changes in Cost and Legislation	(*)		

Delete Clause 70 in its entirety, and substitute:

- Sub-Clause 70.1** (WB-R) The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 60.1, shall be adjusted in respect of the rise or fall in the cost of labor, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause.  
Price Adjustment
- Sub-Clause 70.2** (WB-R) To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.  
Other Changes in Cost
- Sub-Clause 70.3** (WB-R) The adjustment to the Interim Payment Certificates in respect of changes in cost and legislation shall be determined from separate formulae for each of the currencies of payment<sup>22</sup> and each of the types of construction work to be performed and Plant to be supplied.<sup>23</sup> The formulae will be of the following general type:

$$pn = A + b \frac{Ln}{Lo} + c \frac{Mn}{Mo} + d \frac{En}{Eo} + etc.$$

Where:

**pn** is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, determined in accordance with Paragraph 60.1 (d), and with Paragraphs 60.1 (e) and (f), where such variations and daywork are not otherwise subject to adjustment;

**A** is a constant, specified in the Appendix to Bid, representing the nonadjustable portion in contractual payments;<sup>24</sup>

<sup>22</sup> In contracts involving various currencies, formulae, or families of formulae that derive price adjustment factors for each currency are **essential**.

<sup>23</sup> For complex Works involving several types of construction work with different inputs, a family of formulae will be necessary. The various items of Daywork may also require different formulae, depending on the nature and source of the inputs.

<sup>24</sup> Insert a figure for factor **A** only where there is a part of the Contractors' expenditures that will not be subject to fluctuation in cost (for example, stamp duties and other expenses incurred in formalizing the Contract), or to compensate for the unreliability of some indices. **A** should normally not exceed 0.10.

**b, c, d**, etc., are weightings or coefficients representing the estimated proportion of each cost element (labor, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the Appendix to Bid; the sum of A, b, c, d, etc., shall be one;

**Ln, Mn, En**, etc., are the current cost indices or reference prices of the cost elements in the specific currency of origin for month “**n**,” determined pursuant to Sub-Clause 70.5, applicable to each cost element; and

**Lo, Mo, Eo**, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 70.5.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor **Zo/Zn** will be applied to the respective component factor of **pn** for the formula of the relevant currency. **Zo** is the number of units of currency of the country of the index, equivalent to one unit of the currency of payment on the date of the base index, and **Zn** is the corresponding number of such currency units on the date of the current index.<sup>25</sup>

- |  |        |   |
|--|--------|---|
| <b>Sub-Clause 70.4</b>                       | (WB-R) | The sources of indices shall be those listed in the Appendix to Bid, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor’s proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his bid the tabulation of Weightings and Source of Indices in the Appendix to Bid, which shall be subject to approval by the Engineer. |
| Sources of<br>Indices and<br>Weightings      |        |   |
| <b>Sub-Clause 70.5</b>                       | (WB-R) | The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of bids. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which   |
| Base, Current,<br>and Provisional<br>Indices |        |   |

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<sup>25</sup> The correct procedure for price adjustment is to use an index relating to the country of supply for a particular input and to make payment in the currency of that country. However, if price adjustment payments are made in a currency other than the currency of the source of the indexed input, distortions may occur due to differential rates of price variation and periodic exchange rate changes. Hence, the need for a correction factor.

a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

- Sub-Clause 70.6** (WB-R) If the Contractor fails to complete the Works within the time for completion prescribed under Clause 43, adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the MDA, provided that if an extension of time is granted pursuant to Clause 44, the above provision shall apply only to adjustments made after the expiry of such extension of time.
- Adjustment  
after  
Completion
- Sub-Clause 70.7** (WB-R) The weightings for each of the factors of cost given in the Appendix to Bid shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 51 or for any other reason.
- Weightings
- Sub-Clause 70.8** (F-M) If, after the date 28 days prior to the latest date for submission of bids for the Contract, there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation, or by-law that causes additional or reduced cost to the Contractor, other than under the preceding sub-clauses of this clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the MDA and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the MDA. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1 to 70.7.
- Subsequent  
Legislation
- (\*)

## Currency and Rates of Exchange

- |   |                        |  |
|---|------------------------|--|
| <p><b>Sub-Clause 72.2</b><br/>Currency<br/>Proportions<br/><b>Alternative A:</b><br/><b>To be used</b><br/><b>with Clause 60,</b><br/><b>Alternative A</b></p>  | <p>(WB-M)</p>          | <p>Delete the words from “prevailing, as determined by the Central Agency...” to the end of the sub-clause and substitute with “stated by the Contractor in the Appendix to Bid, included with its original bid.”</p> <p>Add to end of paragraph “All payments shall be made in the currency or currencies specified in the Appendix to Bid pursuant to GCC 72.2. ”</p>  |
| <p><b>Sub-Clause 72.2</b><br/>Currency<br/>Proportions<br/><b>Alternative B:</b><br/><b>To be used</b><br/><b>with Clause 60,</b><br/><b>Alternative B.</b></p> | <p>(WB-M)</p>          | <p>Delete entirely and replace with “All payments shall be made in the currency or currencies specified in the Appendix to Bid. ”</p>  |
| <p><b>Sub-Clause 72.4</b><br/>Substantial<br/>Changes in<br/>Currency<br/>Requirements</p>  | <p>(WB-M)</p>          | <p>The proportions of foreign and local currency payments of the balance of the Contract Price shall be amended by agreement between the MDA and the Contractor to reflect any substantial changes in the expected foreign and local currency requirements of the Contractor during the execution of the Works, provided that</p> <p>(a) the Contractor shall inform the MDA and the Engineer whenever any such substantial change may occur; or</p> <p>(b) the Engineer may recommend a review of such expected requirements if in his judgment there is evidence of a change in the country of origin of materials, Plant, or services to be provided under the Contract that should result in any substantial change of such expected requirements.</p> |
| <p><b>Sub-Clause 73.1</b><br/>Foreign<br/>Taxation</p>  | <p>(WB-M)<br/>(* )</p> | <p>The prices bid by the Contractor shall include all taxes, duties, and other charges imposed outside the MDA’s country on the production, manufacture, sale, and transport of the Contractor’s Equipment, Plant, materials, and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.</p>  |
| <p><b>Sub-Clause 73.2</b><br/>Local Taxation</p>  | <p>(WB-M)<br/>(* )</p> | <p>The prices bid by the Contractor shall include all customs duties, import duties, business taxes, and income and other</p>  |

taxes that may be levied in accordance with the laws and regulations in being on the date 28 days prior to the latest date for submission of bids in the MDA's country on the Contractor's Equipment, Plant, materials, and supplies (permanent, temporary, and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the MDA's country on profits made by him in respect of the Contract.

- Sub-Clause 73.3** (WB-R) The Contractor's staff and labor will be liable to pay personal income taxes in the MDA's country in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.
- Income Taxes on Staff (\*)
- Sub-Clause 73.4** (WB-R) Notwithstanding the provisions of Sub-Clause 73.2, Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or Bank guarantee, valid until the time of completion of the Contract plus six months, in an amount equal to the full import duties and taxes that would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event that the Contractor's Equipment is not exported from the MDA's country on completion of the Contract. A copy of the bond or Bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the MDA upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual
- Duties on Contractor's Equipment<sup>26</sup> (\*)

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<sup>26</sup> Sub-Clause 73.4 should apply where import duties and taxes are to be levied on the value of the Contractor's Equipment that depreciates during construction. Its use is recommended in situations where domestic contractors who have paid full duties for the Contractor's Equipment they use are to compete with foreign contractors. If the LSG wishes to exempt the Contractor from import duties, the sub-clause can be modified by deleting in the first sentence the words "temporarily" and "initial" and concluding the sub-clause on the word "importation" of the same sentence.

value of the Contractor's Equipment and spare parts to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable law. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to be exported; and (b) on the initial imported value of that Contractor's Equipment and spare parts remaining in the MDA's country after completion of the Contract. Upon payment of such dues within 28 days of being invoiced, the bond or Bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

- Sub-Clause 75.1** (WB-O) The MDA shall be entitled to terminate this Contract at any time for the MDA's convenience after giving 56 days' prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor
- (a) shall proceed as provided in Sub-Clause 65.7; and
  - (b) shall be paid by the MDA as provided in Sub-Clause 65.8.
- Sub-Clause 76.1** (WB-M) (a) Any Plant, materials, or services that will be incorporated in or required for the Works, as well as the Contractor's Equipment and other supplies, shall have their origin in any of the countries and territories eligible under the Agency's *Guidelines for Procurement*, as defined in section 14 of the bidding documents, "Eligibility for the Provisions of Goods, Works, and Services in LSG-financed Procurement," as amended periodically by the Agency.
- (b) For the purposes of this clause, "origin" means the place where the materials and equipment were mined, grown, produced, or manufactured, or from which the services are provided.
  - (c) The origin of Goods and Services is distinct from the nationality of the Supplier.
- Sub-Clause 77.1** (F-M) If the Contractor is a joint venture of two or more persons,



Joint and  
Several  
Liability

all such persons shall be jointly and severally bound to the MDA for the fulfillment of the terms of the Contract and shall designate one of such persons to act as a partner in charge with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the MDA.

**Sub-Clause 78.1**  
Details to Be  
Confidential

(F-R)

The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the MDA or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the contract, the same shall be referred to the MDA whose determination shall be final.



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## SECTION VI. TECHNICAL SPECIFICATIONS

### Notes for Preparing Technical Specifications

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Precise and clear Specifications are a prerequisite for bidders to respond realistically and competitively to the requirements of the MDA without qualifying or conditioning their bids. In the context of international competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. A clause setting out the scope of the Works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the Permanent Works, the extent of his obligations must be stated. (See Sub-Clause 8.1 of the Conditions of Contract.)

Samples of Specifications from previous similar projects in the same country are useful in this respect. The use of metric units is encouraged by AGENCY. Most Specifications are normally written specially by the MDA or Engineer to suit the contracts for Works in hand. There are no standard Specifications for universal application in all sectors in all countries, but there are established principles and practices that are reflected in these documents.

There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction,

although not necessarily to be used in a particular Works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for materials, Plant, other supplies, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Agency's country or other standards, the Specifications should state that materials, Plant, other supplies, and workmanship meeting other authoritative standards, and which ensure substantially equal performance, as the standards mentioned, will also be acceptable. The following clause may be inserted in the Conditions of Particular Application or the Specifications:

**Sample Clause: Equivalency of Standards and Codes**

Wherever reference is made in the Contract to specific standards and codes to be met by the materials, Plant, and other supplies to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be accepted subject to the Engineer's prior review and written approval. Differences between the standards specified and the proposed alternative standards must be fully described in writing by the Contractor and submitted to the Engineer at least 28 days prior to the date when the Contractor desires the Engineer's approval. In the event the Engineer determines that such proposed deviations do not ensure substantially equal performance, the Contractor shall comply with the standards specified in the documents.

**Alternative Technical Proposals**

MDAs should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in the bidding documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential bidders. For example:

- pile foundations (proprietary methods and different material)

- bridge foundations (open well, caissons, piles, etc.)
- columns, beams, decking (reinforced concrete, prestressed concrete, steel, etc.)
- proprietary methods for post-tensioning concrete
- lining of canals
- pipeline materials, coating, jointing
- road surfacing (asphalt, concrete, etc.)
- transmission tower design and erection
- street lighting
- offshore foundations
- offshore trestle spans

The MDA should provide a description of the selected parts of the Works with appropriate references to Drawings, Specifications, Bill of Quantities/ Bill of Engineering Measurement and Evaluation (BEME), and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the MDA, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the MDA each on its own merits and independently of whether the bidder has priced the item as described in the MDA's design included with the bidding documents.

In more complex cases, a "turnkey" or "design-and-construct" approach may be more appropriate, in which cases a two-stage bidding process is recommended in conformity with other Agency Standard Bidding Documents.

These **Notes for Preparing Technical Specifications** are intended only as information for the MDA or the person drafting the bidding documents. They should **not** be included in the final documents.

## **SECTION VII. FORM OF BID, APPENDIX TO BID, AND BID SECURITY**

The Bid Appendix and Agreement contained in FIDIC Part I—General Conditions of Contract—are hereby deleted and replaced by the Form of Bid, Appendix to Bid, and Form of Agreement that follow.

**Note:** Prior to the issue of the bidding documents, the MDA should insert relevant data for all items marked with an asterisk (\*) and for any related clauses that have been included in the Conditions of Particular Application.

## Form of Bid

Name of Contract:\*

To:\* *[insert name of MDA]*

Gentlemen:

1. In accordance with the Conditions of Contract, Specification, Drawings, and Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) and Addenda Nos. *[insert Addenda Nos.]* for the execution of the above-named Works we, the undersigned, offer to construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Specifications, Drawings, Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), and Addenda for the sum of *[insert amounts in numbers and words]* *[as specified in the Appendix to Bid or such other sums as may be ascertained in accordance with the conditions]*.
2. We acknowledge that the Appendix forms part of our Bid.
3. We undertake, if our Bid is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Bid.
4. We agree to abide by this Bid until the date specified in ITB Clause 16 *[insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
5. Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us.
6. We understand that you are not bound to accept the lowest or any bid you may receive.
7. We certify/confirm/Company that we comply with the eligibility requirements as per ITB Clause 3 of the bidding documents.
8. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:



Name and address of agent	Amount and currency	Purpose of commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state “none”)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_  
duly authorized to sign bids for and on behalf of \_\_\_\_\_

*[in block capitals or typed]*

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation \_\_\_\_\_

## Appendix to Bid

**Note:** The MDA should insert relevant data for all the items marked with an asterisk (\*) prior to the issue of the bidding documents and for all related clauses that have been included in the Conditions of Particular Application. Where a number of days is to be inserted, it is desirable for the number to be a multiple of seven, for consistency with the Conditions of Contract.

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Bidders should fill in all the appropriate blank spaces. Bidders are required to sign each page of the Appendix to Bid.

### Conditions of Contract Sub-Clause

Definitions	1.1 (a), 69.6	The “Agency” and/or “World Agency” includes the International Agency for Reconstruction and Development (AGENCY) and the International Development Association (IDA).
	*1.1 (a) (i)	The MDA is _____. <i>[insert name]</i>
	*1.1 (a) (iv)	The Engineer is _____. <i>[insert name]</i>
Engineer’s Authority to Issue Variations	*2.1 (d) (ii)	_____ percent of the Contract Price.
	*5.1 (a)	The language is _____. <i>[insert language]</i> <sup>27</sup>
	*5.1 (b)	The law in force is that of _____. <i>[insert name of country]</i>
Performance Security	*10.1	The performance security will be in the form of a _____ <i>[insert either one of “conditional” or “unconditional” “Agency guarantee” or “performance bond”]</i> in the amount(s) of _____ <i>[insert related figure(s)]</i> percent of the Contract

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<sup>27</sup> The Bank requires that the language be English, French, or Spanish for International Competitive Bidding (ICB).

		Price.
Inspection of Site	*11.2	Data made available by the MDA under Sub-Clause 11.1 is open for inspection at <i>[insert address]</i> .
Program to Be Submitted	*14.1	_____ days. <sup>34</sup>
Cash Flow Estimate	*14.3	_____ days. <sup>28</sup>
Country of the MDA	*16.4	The country of the MDA is <i>[insert country]</i> .
Minimum Amount of Third-Party Insurance	*23.2	_____ per occurrence, with the number of occurrences unlimited.
Time for Issue of the Notice to Commence	*41.1	_____ days.
Time for Completion <sup>29</sup>	*43.1	_____ days <sup>30</sup> <i>[or insert date]</i> .
Amount of Liquidated Damages <sup>31</sup>	*47.1	_____ per day.
Limit of Liquidated Damages	*47.1	_____ percent of the final Contract Price.
Amount of Bonus for Early Completion <sup>32</sup>	*47.3	_____ per day.
Limit of Bonus <sup>33</sup>	*47.3	_____ percent of Contract Price.

<sup>28</sup> For consistency with the rest of the Conditions of Contract, the number of days inserted should be a multiple of 7. The number of days for submission of the program and cash flow should be between 14 and 35 days after receipt of the Letter of Acceptance.

<sup>29</sup> Insert the time for completion of the whole of the Works and also the time for completion of Sections, if applicable.

<sup>30</sup> Substitute a specific date, if the optional wording of Sub-Clause 43.1 of the Conditions of Particular Application is used. Further, if times (or dates) are to be specified for various sections of the Works, they should be listed here.

<sup>31</sup> Insert amounts of liquidated damages for Sections, if applicable.

<sup>32</sup> Insert amounts of bonuses for Sections, if applicable.

<sup>33</sup> If specified in Sub-Clause 47.3.

Taking Over of Sections or Parts	*48.2 (a)	<i>[if applicable, listed under Sub-Clause 43.1]</i>
Defects Liability Period	*49.1	_____ days.
	*49.5	_____ years <i>[if applicable]</i> .
Minimum Amount of Interim Payment Certificates	*60.2	_____ amount.
Retention Money <sup>34</sup>	*60.5	_____ percent of Interim Payment Certificates.
Maximum Amount of Advance Payment <sup>35</sup>	*60.7	_____ percent of the Contract Price.
Start Repayment of Advance Payment <sup>36</sup>	*60.7	After certification of _____ percent of the Contract Price.
Monthly Recovery of Advance Payment <sup>37</sup>	*60.7	_____ percent <sup>38</sup> of the amount of monthly Interim Payment Certificates.
Number of Copies of Statement of Completion and Final Statement	*60.1 60.10 60.11	_____ Number.
Settlement of Disputes	*67.1	The appointing authority shall be: _____
Notice to MDA and Engineer	*68.2	The MDA's address is: _____ _____

<sup>34</sup> The amount is usually 5 to 10 percent. Note that one-half will be repaid on Taking-Over, and only the balance will remain as security during the Defects Liability Period.

<sup>35</sup> The advance payment is usually 10 to 15 percent, but may be up to 20 percent in special cases.

<sup>36</sup> Repayment should commence only when about 20 to 30 percent of the Contract payments have been made.

<sup>37</sup> The percentage of each monthly Interim Payment Certificate to be deducted for repayment should be calculated so as to obtain full recovery of the advance payment by the time 80 percent of the Contract Price has been certified for payment.

<sup>38</sup> A form of Bank Guarantee for Advance Payment is provided in Section IX.

\_\_\_\_\_  
*[insert name and address]*

The Engineer's address is:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
*[insert name and address]*

**The items on the following pages are to be filled in by the bidder as part of its bid, except for the items marked \*.**

**Alternative A:** 60.1 *[see Table: Alternative A immediately below]*  
**For Use with** 72.2  
**Alternatives A of**  
**Clause 60 and**  
**Sub-Clause 72.2**

**Table: Alternative A**

Summary of payment currencies of the Bid for \_\_\_\_\_ *[insert name of Section of the Works]*<sup>39</sup>

<i>Name of payment currency</i>	<i>A Amount of currency</i>	<i>B Rate of exchange (local currency per unit of foreign)</i>	<i>C Local currency equivalent C = A x B</i>	<i>D Percentage of Net Bid Price (NBP) <math>\frac{100xC}{NBP}</math></i>
Local currency _____		1.00		
Foreign currency #1 _____				
Foreign currency #2 _____				
Foreign currency #3 _____				

<sup>39</sup> Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The LSG should insert the names of each Section of the Works.

Net Bid Price				100.00
Provisional sums expressed in local currency	123,456*		123,456*	
<b>BID PRICE</b>				

\* To be entered by MDA.

**Alternative B:** 60.1 *[see Table: Alternative B immediately below]*  
**For Use with** 72.2  
**Alternatives B of**  
**Clause 60 and**  
**Sub-Clause 72.2**

**Table: Alternative B**

Summary of currencies of the bid for \_\_\_\_\_ *[insert name of Section of the Works]*<sup>40</sup>

<i>Name of currency</i>	<i>Amounts payable</i>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	

Origin of Materials and Plant 60.3 (a) (v) *[listed under Sub-Clause 70.4]*  
 60.3 (d)

Rate of Interest upon Unpaid Sums \*60.8 \_\_\_\_\_ percent for payments in local currency. For other currencies, refer to the table immediately below.

<i>Currency (as per Sub-Clause 60.1)</i>	<i>London Inter-Agency On-Lending Rate (LIBOR) plus 2 percent<sup>a</sup></i>
_____	_____

<sup>40</sup> Separate tables may be required if the various Sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The LSG should insert the names of each Section of the Works.

_____	_____
_____	_____
etc.	etc.

a: The above rates of interest for foreign currencies shall be supplied by the bidder, and these rates are subject to clarification/negotiation before formalizing the Contract.

**Approximate Weightings for Price Adjustment Formulae** \*70.3 [See table immediately below.]

<i>Description of index</i>	<i>% range of weighting<sup>a</sup></i>
Fixed	* _____
Labor	* _____ to _____
_____	* _____ to _____
_____	* _____ to _____
etc.	
<b>Total</b>	<b>100</b>

a. As guidance to bidders and for the purpose of checking their submissions, the MDA has estimated and provided a range of acceptable weightings for related major construction inputs in accordance with the potential range of construction methodologies, based on estimated cost in a common currency.

**Weightings and Indices<sup>41</sup>** 70.3  
70.4

In the tables immediately below, bidders shall (a) indicate their amounts of local currency payment, (b) indicate their proposed source and base values of indices for the different foreign currency elements of cost, (c) derive their proposed weightings for local and foreign currency payment as indicated below, and (d) list the exchange rates used in the currency conversion. If payment is to be made in more than one foreign currency, the bidder shall complete a similar table of source indices for each currency. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.

<sup>41</sup> The LSG shall enter the amount of the fixed element A in the tables below, and the source of indexing of local currency elements of cost.

**Table A. Local Currency**

<i>Index code*</i>	<i>Index description*</i>	<i>Source of index*</i>	<i>Base value and date*</i>	<i>Bidder's related currency amount</i>	<i>Bidder's proposed weighting</i>
	Nonadjustable	—	—	—	A: _____* B: _____ C: _____ D: _____ E: _____
Total					1.00

**Table B. Foreign Currency 1 (FC1). State type: \_\_\_\_\_<sup>a</sup>**

<i>Index code</i>	<i>Index description</i>	<i>Source of index</i>	<i>Base value and date</i>	<i>Bidder's related source currency in type/amount</i>	<i>Equivalent in FC1</i>	<i>Bidder's proposed weighting</i>
	Nonadjustable	—	—	—		A: _____* B: _____ C: _____ D: _____ E: _____
Total						1.00

a. If the bidder wishes to quote in more than one foreign currency (up to three), this table should be repeated for each foreign currency.



**Schedule of Named Specialist Subcontractors<sup>a</sup>**

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<i>Item</i>	<i>Element of work</i>	<i>Approximate value</i>	<i>Name and address of subcontractor</i>	<i>Statement of similar works executed</i>
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a. The bidder shall enter in this schedule a list of the specialized works and approximate value of the work for which he proposes to use specialist subcontractors, together with the names and addresses of the proposed subcontractors.

## Form of Bid Security (Bank guarantee)<sup>42</sup>

\_\_\_\_\_

*[Agency's Name, and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_ *[Name and Address of MDA]*

**Date:** \_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ *[name of the Bidder]* (hereinafter called "the Bidder") has submitted to you its bid dated \_\_\_\_\_ (hereinafter called "the Bid") for the execution of \_\_\_\_\_ *[name of contract]* under Invitation for Bids No. \_\_\_\_\_ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we \_\_\_\_\_ *[name of Agency]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ *[amount in figures]* (\_\_\_\_\_) *[amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB") of the IFB; or
- (c) having been notified of the acceptance of its Bid by the MDA during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful bidder; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

\_\_\_\_\_

<sup>42</sup> The Bidder shall complete either this form of Bank Guarantee or may provide another security acceptable to the LSG.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

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*[signature(s)]*

## Form of Bid Security (Bid Bond)

BOND NO. \_\_\_\_\_

BY THIS BOND [*insert name of Bidder*] as Principal (hereinafter called “the Principal”), and [*insert name, legal title, and address of surety*], **authorized to transact business in** [*insert name of country of MDA*], as Surety (hereinafter called “the Surety”), are held and firm/Companyly bound unto [*insert name of MDA*] as Obligee (hereinafter called “the MDA”) in the sum of [*insert amount of Bond*]<sup>43</sup> [*insert amount in words*], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firm/Companyly by these presents.

WHEREAS the Principal has submitted a written Bid to the MDA dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for the construction of [*insert name of Contract*] (hereinafter called the “Bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (1) withdraws its Bid during the period of bid validity specified in the Form of Bid; or
- (2) refuses to accept the correction of its Bid Price, pursuant to Sub-Clause 29.2 of the Instructions to Bidders; or
- (3) having been notified of the acceptance of its Bid by the MDA during the period of Bid validity;
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

then the Surety undertakes to immediately pay to the MDA up to the above amount upon receipt of the MDA’s first written demand, without the MDA having to substantiate its demand, provided that in its demand the MDA shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and affect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the MDA at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

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<sup>43</sup> The amount of the Bond shall be denominated in the currency of the LSG’s country or the equivalent amount in a freely convertible currency.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*



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## **SECTION VIII. BILL OF QUANTITIES/BILL OF ENGINEERING MEASUREMENT AND EVALUATION (BEME)**

### **Notes for Preparing a Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME)**

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#### **Objectives**

The objectives of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) are

- (a) to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and
- (b) when a contract has been entered into, to provide a priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) should be as simple and brief as possible.

#### **Content**

The Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) should be divided generally into the following sections:

- (a) Preamble;
- (b) Work Items (grouped into parts);
- (c) Daywork Schedule; and

(d) Summary.

### **Preamble**

The Preamble should indicate the inclusiveness of the unit prices, and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) and that are to be used for the measurement of any part of the Works.

### **Rock**

Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), if not given in the Technical Specification, should be given in the Preamble, and this definition should be used for the purposes of measurement and payment.

### **Work Items**

The items in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) should be grouped into sections to distinguish between those parts of the Works that by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME). When a family of Price Adjustment Formulae are used, they should relate to appropriate sections in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).

### **Quantities**

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate, and spurious accuracy should be avoided.

### **Units of Measurement**

The following units of measurement and abbreviations are recommended for use (unless other national units are mandatory in the country of the MDA).



Unit	Abbreviation	Unit	Abbreviation
cubic meter	m <sup>3</sup> or cu m	millimeter	Mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

### Ground and Excavation Levels

The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which the excavated surface is not also the final surface. The depths of work should be measured from the commencing surface to the excavated surface, as defined.

### Daywork Schedule

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), is relatively high. To facilitate checking by the MDA of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise:

- (a) a list of the various classes of labor, materials, and Contractor's Equipment for which basic Daywork rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Daywork basis; and
- (b) a percentage to be entered by the bidder against each basic Daywork Subtotal amount for labor, materials, and Plant representing the Contractor's profit, overheads, supervision, and other charges.

### Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities/Bill of

Engineering Measurement and Evaluation (BEME), and *not* by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a “Provisional Sum” in the Summary of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME). Similarly, a contingency allowance for possible price increases should be provided as a “Provisional Sum” in the Summary of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME). The inclusion of such Provisional Sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by a Nominated Subcontractor (reference Clause 59 or Part I) should be indicated in the relevant part of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the MDA to select the specialists, who are then nominated as subcontractors to the main or prime contractor. To provide an element of competition among the main bidders (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful bidder as prime contractor for the use and convenience of the specialist or nominated subcontractor, each related Provisional Sum should be followed by an item in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) inviting a percentage (to be quoted by the main bidder) payable on the actual expenditure from the Provisional Sum.

### **Summary**

The Summary should contain a tabulation of the separate parts of the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.

These Notes for Preparing a Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) are intended only as information for the MDA or the person drafting the bidding documents. They should not be included in the final documents.

**Sample****Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)****A. Preamble**

1. The Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) shall be read in conjunction with the Instructions to Bidders, General and Special Conditions of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices bid in the priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) shall, except insofar as it is otherwise provided under the Contract, include all Constructional Plant, labor, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).
5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME), and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME). References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).
7. Provisional Sums included and so designated in the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) shall be expended in whole or in part at

the direction and discretion of the Engineer in accordance with Sub-Clause 52.4 and Clause 58 of Part I of the Conditions of Contract.

8. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used]*.<sup>44</sup>
9. Errors will be corrected by the MDA for any arithmetic errors in computation or summation as follows:
- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will govern; and
  - (b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the MDA, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
10. Rock is defined as all materials that, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake hp with a single, rear-mounted, heavy-duty ripper.

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<sup>44</sup> The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the *Standard Method of Measurement* of the U.K. Institution of Civil Engineers.

**Sample  
Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)**

**B. Work Items**

1. The Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) usually contains the following part Bills, which have been grouped according to the nature or timing of the work:

- Bill No. 1—General Items;
- Bill No. 2—Earthworks;
- Bill No. 3—Culverts and Bridges;
- Bill No. 4—etc., as required;
- Daywork Schedule; and
- Summary Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).

2. Bidders shall price the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME) in local currency only and shall indicate in the Appendix to Bid the percentage expected for payment in foreign currency or currencies.<sup>45</sup>

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<sup>45</sup> The example given illustrates one of the two alternative methods of setting up a Bill of Quantities, in which rates and prices are entered in local currency only, with bidders stating separately their proportionate requirements in different types and amounts of foreign currencies. The second method is where rates and prices are broken down for each item into local and foreign currency components. The first method is administratively more convenient and hence is more commonly used in Works contracts.

**Sample  
Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)**

**Bill No. 1: General Items**

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
101	Performance Bond/Guarantee	sum	item	—	
102	Insurance of the Works	sum	item	—	
103	Insurance of Contractor's Equipment	sum	item	—	
104	Third-Party Insurance	sum	item	—	
105	Allow for maintenance of Works for 12 months after completion	month	12		
106	—etc.—				
112	Provide and equip Engineer's offices	nr	2		
113	Maintain Engineer's offices for 24 months, including services	month	24		
114	—etc.—				
121	Provide diversion road	sum	item	—	
122	Provide for traffic control and maintenance of diversion road	month	24	—	
123	—etc.—				
132	Provide for cleaning up the Site on completion	sum	item	—	
	—etc.—				
Total for Bill No. 1					_____
(carried forward to Summary, p. _____)					

**Sample  
Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)**

**Bill No. 2: Earthworks**

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
201	Excavate topsoil to maximum depth 25 cm and stockpile for reuse, maximum haul distance 1 km	m <sup>3</sup>	95,000		
202	Excavate topsoil to maximum depth 25–50 cm, and dispose	m <sup>3</sup>	15,000		
203	—etc.—				
206	Excavate fill material from cuttings or approved borrow pits, haul up to 1 km, deposit, shape, and compact to fill	m <sup>3</sup>	258,000		
207	Excavate rock in cuttings and dispose, any depth	m <sup>3</sup>	25,000		
208	—etc.—				
				Total for Bill No. 2 _____	
				(carried forward to Summary, p. _____)	





## Sample Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME)

### C. Daywork Schedule<sup>46</sup>

#### General

1. Reference should be made to Sub-Clause 52.4 of Part I of the Conditions of Contract. Work shall not be executed on a daywork basis except by written order of the Engineer. Bidders shall enter basic rates for daywork items in the Schedules, which rates shall apply to any quantity of daywork ordered by the Engineer. Nominal quantities have been indicated against each item of daywork, and the extended total for Daywork shall be carried forward as a Provisional Sum to the Summary Total Bid Amount. Unless otherwise adjusted, payments for daywork shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract.

#### Daywork Labor

2. In calculating payments due to the Contractor for the execution of daywork, the hours for labor will be reckoned from the time of arrival of the labor at the job site to execute the particular item of daywork to the time of return to the original place of departure, but excluding meal breaks and rest periods. Only the time of classes of labor directly doing work ordered by the Engineer and for which they are competent to perform will be measured. The time of gangers (charge hands) actually doing work with the gangs will also be measured but not the time of foremen or other supervisory personnel.

3. The Contractor shall be entitled to payment in respect of the total time that labor is employed on daywork, calculated at the basic rates entered by him in the **Schedule of Daywork Rates: 1. Labor**, together with an additional percentage payment on basic rates representing the Contractor's profit, overheads, etc.,<sup>47</sup> as described below:

- (a) The basic rates for labor shall cover all direct costs to the Contractor, including (but not limited to) the amount of wages paid to such labor, transportation time,

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<sup>46</sup> (i) A "Daywork Schedule" is commonly found in contracts where the likely incidence of unforeseen work cannot be covered by definitive descriptions and approximate quantities in the Bill of Quantities. The preferred alternative is to value the additional work in accordance with Sub-Clauses 52.1 and 52.2 of Part I of the Conditions of Contract. A Daywork Schedule normally has the disadvantage of not being competitive among bidders, who may therefore load the rates assigned to some or all the items. If a Daywork Schedule is to be included *at all* in the bidding documents, it is preferable to include nominal quantities against the items most likely to be used, and to carry the sum of the extended amounts forward into the Bid Summary in order to make the basic Schedule of Daywork Rates competitive.

(ii) The total amount assigned to such competitive daywork is normally 3–5 percent of the estimated base Contract Price and is regarded as a Provisional Sum for contingencies to be expended under the direction and at the discretion of the Engineer. A limitation on quantity should *not* apply, and the unit rate quoted should be invariable whatever quantities of work are ordered.

<sup>47</sup> This method of indicating profit and overheads separately facilitates the addition of further items of daywork, if needed, the basic costs of which can then be checked more easily. An alternative is to make Daywork rates all-inclusive of the Contractor's overhead and profit, etc., in which case this paragraph and the relevant Daywork Schedule should be modified accordingly.

overtime, subsistence allowances, and any sums paid to or on behalf of such labor for social benefits in accordance with [country of MDA] law. The basic rates will be payable in local currency only.

- (b) The additional percentage payment to be quoted by the bidder and applied to costs incurred under (a) above shall be deemed to cover the Contractor's profit, overheads, superintendence, liabilities, and insurances and allowances to labor, timekeeping, and clerical and office work, the use of consumable stores, water, lighting, and power; the use and repair of stagings, scaffolding, workshops, and stores, portable power tools, manual plant, and tools; supervision by the Contractor's staff, foremen, and other supervisory personnel; and charges incidental to the foregoing. Payments under this item shall be made in the following currency proportions:
  - (i) foreign: \_\_\_ percent (to be stated by bidder).<sup>48</sup>
  - (ii) local: \_\_\_\_\_ percent (to be stated by bidder).

### Daywork Materials

4. The Contractor shall be entitled to payment in respect of materials used for daywork (except for materials for which the cost is included in the percentage addition to labor costs as detailed heretofore), at the basic rates entered by him in the **Schedule of Daywork Rates: 2. Materials**, together with an additional percentage payment on the basic rates to cover overhead charges and profit, as follows:

- (a) the basic rates for materials shall be calculated on the basis of the invoiced price, freight, insurance, handling expenses, damage, losses, etc., and shall provide for delivery to store for stockpiling at the Site. The basic rates shall be stated in local currency, but payment will be made in the currency or currencies expended upon presentation of supporting documentation.
- (b) the additional percentage payment shall be quoted by the bidder and applied to the equivalent local currency payments made under (a) above. Payments under this item will be made in the following currency proportions:
  - (i) foreign: \_\_\_ percent (to be stated by the bidder);<sup>49</sup>
  - (ii) local: \_\_\_\_\_ percent (to be stated by the bidder);<sup>56</sup>

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<sup>48</sup> The bidder shall state the percentage in a common foreign currency equivalent required for payment and the exchange rates and official sources used.

<sup>49</sup> The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

- (c) the cost of hauling materials for use on work ordered to be carried out as daywork from the store or stockpile on the Site to the place where it is to be used will be paid in accordance with the terms for Labor and Construction in this schedule.

### Daywork Contractor's Equipment

5. The Contractor shall be entitled to payments in respect of Contractor's Equipment already on Site and employed on daywork at the basic rental rates entered by him in the **Schedule of Daywork Rates: 3. Contractor's Equipment**. Said rates shall be deemed to include due and complete allowance for depreciation, interest, indemnity, and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumables, and all overhead, profit, and administrative costs related to the use of such equipment.<sup>50</sup> The cost of drivers, operators, and assistants will be paid for separately as described under the section on Daywork Labor.<sup>51</sup>

6. In calculating the payment due to the Contractor for Contractor's Equipment employed on daywork, only the actual number of working hours will be eligible for payment, except that where applicable and agreed with the Engineer, the traveling time from the part of the Site where the Contractor's Equipment was located when ordered by the Engineer to be employed on daywork and the time for return journey thereto shall be included for payment.

7. The basic rental rates for Contractor's Equipment employed on daywork shall be stated in local currency, but payments to the Contractor will be made in currency proportions, as follows:

- (a) foreign: \_\_\_\_\_ percent (to be stated by the bidder).<sup>52</sup>
- (b) local: \_\_\_\_\_ percent (to be stated by the bidder).<sup>59</sup>

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<sup>50</sup> This is an example of wording to include overhead and profit, etc., in the daywork rates. A separate percentage addition could be used as for labor and materials.

<sup>51</sup> An alternative, sometimes adopted for administrative convenience, is to include the cost of drivers, operators, and assistants in the basic rates for Contractor's Equipment. The last sentence of paragraph 5 should then be modified accordingly.

<sup>52</sup> The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.







**Sample  
Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)**

**Daywork Summary**

	<i>Amount<sup>a</sup></i> (       )	<i>%</i> <i>Foreign</i>
1. Total for Daywork: Labor		
2. Total for Daywork: Materials		
3. Total for Daywork: Contractor's Equipment		
Total for Daywork (Provisional Sum) (carried forward to Bid Summary, p. ____)	_____	_____

a. The MDA should insert local currency unit.



**Sample  
Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)**

**Summary of Specified Provisional Sums**

<i>Bill no.</i>	<i>Item no.</i>	<i>Description</i>	<i>Amount</i>
1			
2	2.8	Supply and install equipment in pumping station	1,250,000
3			
4	4.32	Provide for ventilation system in subway tunnel	3,500,000
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary (B), p. ____ )			4,750,000

**Sample  
Bill of Quantities/Bill of Engineering Measurement and Evaluation  
(BEME)**

**Grand Summary**

Contract Name:

Contract No.:

<i>General Summary</i>	<i>Page</i>	<i>Amount</i>
Bill No. 1: Preliminary Items		
Bill No. 2: Earthworks		
Bill No. 3: Drainage Structures		
—etc.—		
Total for Daywork (Provisional Sum)		
Subtotal of Bills	(A)	
Specified Provisional Sums included in subtotal of bills	(B)	4,750,000 <sup>b</sup>
Total of Bills Less Specified Provisional Sums (A - B)	(C)	
Add Provisional Sum <sup>a</sup> for Contingency Allowance	(D)	[sum] <sup>b</sup>
Bid Price (A + D) (Carried forward to Form of Bid)	(E)	

a. All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 52.4 and Clause 58 of Part I of the Conditions of Contract.

b. To be entered by the MDA.

**SECTION IX. FORM OF AGREEMENT, FORMS OF  
PERFORMANCE SECURITY, AND BANK GUARANTEE FOR  
ADVANCE PAYMENT**

## Form of Agreement

### AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
between \_\_\_\_\_ of \_\_\_\_\_  
(hereinafter called "the MDA") of the one part and \_\_\_\_\_  
of \_\_\_\_\_ (hereinafter called "the Contractor") of the other part.

WHEREAS the MDA is desirous that certain Works should be executed by the Contractor, viz., \_\_\_\_\_, and has accepted a Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
  - (a) the Letter of notification of award;
  - (b) the said Bid and Appendix to Bid;
  - (c) the Conditions of Contract (Part II);
  - (d) the Conditions of Contract (Part I);
  - (e) the Specifications;
  - (f) the Drawings;
  - (g) the Priced Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME); and
  - (h) other documents, as listed in the Appendix to Bid
3. In consideration of the payments to be made by the MDA to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the MDA to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The MDA hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of \_\_\_\_\_ was hereunto affixed in the presence of:  
\_\_\_\_\_ or \_\_\_\_\_

Signed, sealed, and delivered by the said \_\_\_\_\_  
in the presence of: \_\_\_\_\_

Binding Signature of MDA \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

## **Forms of Performance Security and Bank guarantee for Advance Payment**

Samples of acceptable forms of performance security are annexed. Bidders should not complete the forms at this time. Only the successful bidder will be required to provide performance security in accordance with one of the samples, or in a similar form acceptable to the MDA.

**Annex A Form:**<sup>53</sup>      **Alternative 1** Performance Bank guarantee

**Alternative 2** Performance Bank guarantee (Conditional)

**Alternative 3** Performance Bond

**Annex B Form:**<sup>54</sup>      Bank guarantee for Advance Payment

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<sup>53</sup> The LSG should select one or more of the alternatives indicated and include it (them) in the bidding documents prior to issue.

<sup>54</sup> The LSG should omit annex B if no Advance Payment is to be provided.

**Annex A Form: Alternative 1**

**Performance Bank guarantee**

\_\_\_\_\_ [Agency's Name, and Address of Issuing Branch or  
Office]

**Beneficiary:** \_\_\_\_\_ [Name and Address of MDA]

**Date:** \_\_\_\_\_

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_

We have been informed that [name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. [reference number of the contract] dated with you, for the execution of [name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we [name of Agency] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures] (\_\_\_\_\_) [amount in words],<sup>55</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-eight days from the date of issuance of the Taking-Over Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_,<sup>56</sup> whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

<sup>55</sup> The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the LSG.

<sup>56</sup> Insert the date twenty-eight days after the expected completion date. The LSG should note that in the event of an extension of the time for completion of the Contract, the LSG would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the LSG might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the LSG's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

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*[signature(s)]*



**Annex A Form: Alternative 2**

**Performance Bank guarantee (Conditional)<sup>57</sup>**

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_  
between [name of Agency] of [address of Agency] (hereinafter called “the Guarantor”) of the one  
part and [name of MDA] of [address of MDA] (hereinafter called “the MDA”) of the other part.

**WHEREAS**

- (1) this Agreement is supplemental to a contract (hereinafter called the “Contract”) made between [name of Contractor] of [address of Contractor] (hereinafter called “the Contractor”) of the one part and the MDA of the other part whereby the Contractor agreed and undertook to execute the Works of [name of Contract and brief description of the Works] for the sum of [amount in Contract currency] being the Contract Price; and
- (2) the Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

NOW, THEREFORE, the Guarantor hereby agrees with the MDA as follows:

- (a) If the Contractor (unless relieved from the performance by any clause of the Contract or by statute or by the decision of a tribunal of competent jurisdiction) shall in any respect fail to execute the Contract or commit any breach of his obligations thereunder, then the Guarantor will indemnify and pay the MDA the sum of [amount of Guarantee], [amount in words],<sup>58</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the MDA or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor before a date 28 days after the issue date of the Taking-Over Certificate.
- (b) The Guarantor shall not be discharged or released from his guarantee by an arrangement between the Contractor and the MDA, with or without the

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<sup>57</sup> The triggering of this form of performance guarantee is conditional (see sub-clause (a) of the Guarantee) upon the Contractor “failing to execute the Contract or committing a breach of his obligations thereunder” and requires a statement by the LSG and/or the Engineer to that effect and an exercise of judgment by the Guarantor as to whether the required conditions of default have been fulfilled. Some forms of guarantee contain further qualifying conditions and are not triggered until an agreement has been reached on the amount of damages payable, or until an award has been made under the applicable settlement of disputes procedures. The construction industry favors this form of guarantee over the unconditional guarantee whenever it is available. However, not all commercial banks (as Guarantors) are willing to issue conditional guarantees, and not all LSGs are prepared to accept this form of performance security.

<sup>58</sup> An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the LSG.

consent of the Guarantor, or by any alteration in the obligations undertaken by the Contractor, or by any forbearance on the part of the Contractor, whether as to the payment, time, performance, or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

This Guarantee shall be valid until a date 28 days from the date of issue of the Taking-Over Certificate.

Given under our hand on the date first mentioned above.

SIGNED BY \_\_\_\_\_  
for and on behalf of the Guarantor in the presence of:

\_\_\_\_\_  
(Witness)

SIGNED BY \_\_\_\_\_  
for and on behalf of the MDA in the presence of:

\_\_\_\_\_  
(Witness)

### **Annex A Form: Alternative 3**

#### **Performance Bond<sup>59</sup>**

By this Bond [*name and address of Contractor*] as Principal (hereinafter called “the Contractor”) and [*name, legal title, and address of Surety, bonding company, or insurance company*] as Surety (hereinafter called “the Surety”), are held and firmly bound unto [*name and address of MDA*] as Obligee (hereinafter called “the MDA”) in the amount of [*amount of Bond*], [*amount in words*],<sup>60</sup> for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the MDA dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, for [*name of Contract*] in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the MDA to be, in default under the Contract, the MDA having performed the MDA’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified Bidders for submission to the MDA for completing the Contract in accordance with its terms and conditions, and upon determination by the MDA and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and MDA and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the

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<sup>59</sup> This form of bond corresponds to the North American practice, and should not be interpreted in the context of a “bond,” as known in some other countries. Other forms of bonds, such as those prepared by ICC, may be used, provided they are acceptable to the LSG. As with the conditional bank guarantee, the wording of some bonds may be such that a default has to be established by a third party to trigger action by the Surety.

<sup>60</sup> An amount is to be inserted by the Surety, representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the LSG.

total amount payable by MDA to Contractor under the Contract, less the amount properly paid by MDA to Contractor; or

- (3) pay the MDA the amount required by MDA to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the MDA named herein or the heirs, executors, administrators, successors, and assigns of the MDA.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

**Annex B Form**

**Bank guarantee for Advance Payment**

\_\_\_\_\_ [Agency's Name, and Address of Issuing Branch or  
Office]

**Beneficiary:** \_\_\_\_\_ [Name and Address of MDA]

**Date:** \_\_\_\_\_

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

We have been informed that [name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. [reference number of the contract] dated \_\_\_\_\_ with you, for the execution of [name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum [amount in figures] (\_\_\_\_\_) [amount in words] is to be made against an advance payment guarantee.

At the request of the Contractor, we [name of Agency] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures] (\_\_\_\_\_) [amount in words]<sup>61</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_ [name and address of Agency].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_,<sup>62</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

<sup>61</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the LSG.

<sup>62</sup> Insert the expected expiration date of the Time for Completion. The LSG should note that in the event of an extension of the time for completion of the Contract, the LSG would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

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*[signature(s)]*

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date established in the guarantee. In preparing this guarantee, the LSG might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the LSG's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

## **SECTION X. DRAWINGS**

### **Notes for Preparing the Drawings**

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These Notes for Preparing the Drawings are intended only as information for the MDA or the persons preparing the bidding documents. They should not be included in the final documents.

It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the Contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

A simplified map showing the location of the Site in relation to the local geography, including major roads, posts, airports, and railroads, is helpful.

The construction drawings, even if not fully developed, must show sufficient details to enable bidders to understand the type and complexity of the work involved and to price the Bill of Quantities/Bill of Engineering Measurement and Evaluation (BEME).





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## SECTION XI. EXPLANATORY NOTES

### Notes and Additional Clauses to Section IV

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(Part II—Conditions of Particular Application)

These notes contain annotations to the clauses of Part II, particularly related to the changes introduced in the text of FIDIC, fourth edition, reprinted 1992, to adapt it to AGENCY required or recommended practice. Additional clauses for detailed aspects of contract formulation are also included. These Notes should not appear in the bidding documents. Rather, any desired sub-clauses should be incorporated in Part II of the Conditions of Contract.

Reference to annotations or additional clauses is indicated in Part II by an asterisk (\*) in the margin. The clause numbers hereunder refer to Part II clause numbers.

**Sub-Clause 1.1 (a) (iv)** The change from the FIDIC Part I provision is necessary because the FIDIC text makes replacement of the Engineer impossible without the Contractor's approval.

**Sub-Clause 2.1** The FIDIC Part II example is not sufficiently explicit for the purposes of this provision.

**Sub-Clause 5.2** FIDIC's alternative providing for a clear precedence for the contract documents is used. AGENCY does not allow the use of FIDIC's other alternative.

**Sub-Clause 10.1** This sub-clause replaces FIDIC Sub-Clause 10.1 (Parts I and II), and FIDIC Sub-Clause 10.4 (Part II), which do not meet AGENCY requirements. Also, while AGENCY would not object to the use of the Example Performance Guarantee and the Example Surety Bond for Performance set forth on pages 7 and 8 of FIDIC Part II, the attention of MDAs is drawn to the fact that both examples represent **conditional** guarantees. These bidding documents also provide an example of an **unconditional** Performance Guarantee. The type of performance security is decided by the MDA.

**Sub-Clause 10.2** This provision voids a Performance Security 28 days after issue of the

Taking-Over Certificate in the case of a Bank guarantee, and one year after the TOC in the case of a bond.

- Sub-Clause 10.3** This provision might provide an early warning system for the Contractor, which could facilitate his obtaining a court injunction against efforts by the MDA to demand payment under an unconditional performance security. MDAs may, therefore, wish to consider deleting this sub-clause.
- Sub-Clause 11.2** The data to which this sub-clause refers should only include items that cannot physically or legally be reproduced and distributed with the bidding documents as, for instance, borehole cores, pit samples, detailed meteorological records, and maps of restricted areas. Such information should be easily accessible for inspection by bidders and later by the Contractor. The sub-clause should not be used as a means for suppressing or concealing information that is essential for performance of the Contract.
- Sub-Clause 20.4** This sub-clause replaces FIDIC Sub-Clause 20.4 (Part I), which switches risks to the MDA in a manner unacceptable to AGENCY.
- Sub-Clause 21.2 (a)** It is not sufficient to provide, as does FIDIC Sub-Clause 21.2 (a) (Part I), that the Contractor shall insure the Works, materials, and Plant “from the start of the work at the Site” because this leaves the parties uninsured while Plant is being manufactured at a different location (e.g., the Contractor’s country) and while materials and Plant are being transported to the Site. The amendment mandated by AGENCY is designed to ensure adequate insurance coverage.
- Sub-Clause 25.1** This change from the FIDIC text is necessary to tie in with the revised Sub-Clause 21.2 (a).
- Sub-Clause 25.5** This provision is required to specify, in accordance with *Guidelines for Procurement*, that the Contractor must be free to place insurance with insurers from any eligible source country.
- Clauses 21, 23, and 25**  
Insurances  
Arranged by  
MDA
- Note: In certain circumstances, such as where a number of separate contractors are employed on a single project, or phased take-over is involved, it may be preferable for the MDA to arrange insurance for the Works and third-party insurance. In such case, it must be clear in the Contract that the Contractor is not precluded from taking out other insurance, should he wish to do so, in addition to that arranged by the MDA.

Bidders must be provided at the bidding stage with details of the insurance to be arranged by the MDA, in order to assess what provision to make in their rates and prices for any additional insurance, and for the amount of policy deductibles

that they will be required to bear. Such details shall form part of the Contract.

Sample clauses to allow for the arrangement of insurance by the MDA follow:

- |   |                 |  |
|---|-----------------|--|
| <b>Clause 21</b>  | (F-O)           | Delete the text of the clause and substitute the following renumbered sub-clauses:   |
| <b>Sub-Clause 21.1</b><br>Insurance of<br>Works                     | (F-O)           | Without limiting his or the Contractor's obligations under Clause 20, the MDA will insure: <ul style="list-style-type: none"> <li>(a) the Works, together with materials, Plant, and other supplies for incorporation therein, to the full replacement cost (the term "cost" in this context shall include profit), and</li> <li>(b) an additional sum to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature.</li> </ul> |
|   | (WB-M)          | Such insurance shall provide for compensation to be payable in the types and proportions of the currencies required to rectify the loss or damage incurred. <sup>63</sup>  |
| <b>Sub-Clause 21.2</b><br>Insurance of<br>Contractor's<br>Equipment | (F-O)           | The Contractor shall, without limiting his obligations and responsibilities under Clause 20, insure the Contractor's Equipment and other things brought on to the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.   |
| <b>Sub-Clause 21.3</b><br>Scope of Cover                            | (F-O)<br>(WB-M) | The insurance in Sub-Clause 21.1 shall be in the joint <sup>64</sup> names of the Contractor and the MDA and shall cover <ul style="list-style-type: none"> <li>(a) the MDA and the Contractor against loss or damage as provided in the details of insurance annexed to these Conditions, from the first working day after the Commencement Date until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be; and</li> </ul>  |

<sup>63</sup> Use of this paragraph is mandatory when the revised text of Clauses 21, 23, and 25 is applied.

<sup>64</sup> IBRD requires that insurance be valid from the first working day after the Commencement Date (see the mandatory amendment of Sub-Clause 21.2 [a]).

- (b) the Contractor for his liability
  - (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, or
  - (ii) caused by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

**Sub-Clause 21.4** (F-O) Any amounts not insured or not recovered from the insurers shall be borne by the MDA or the Contractor in accordance with responsibilities under Clause 20.  
 Responsibility for Amounts Not Recovered

**(Clause 22 is not modified)**

**Clause 23** (F-O) Delete the text of the clause and replace with the following:

**Sub-Clause 23.1** (F-O) Without limiting his or the Contractor's obligations and responsibilities under Clause 22, the MDA will insure in the joint names of the Contractor and the MDA, against liabilities for death of or injury to any person (other than as provided for in Clause 24) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract, as provided in the details of insurance referred to in Sub-Clause 21.3.  
 Third Party Insurance (including MDA's Property)

**Clause 25** (F-O) Delete the text of the clause and replace with the following:

**Sub-Clause 25.1** (F-O) The insurance policies to be arranged by the MDA pursuant to Clauses 21 and 23 shall be consistent with the general terms described in the Bid and copies of such policies shall when required be supplied by the MDA to the Contractor. The MDA shall provide evidence to the Contractor prior to the start of work at the Site that insurances required under the Contract have been effected.<sup>65</sup>  
 Evidence and Terms of Insurances (WB-R)

**Sub-Clause 25.2** (F-O) The MDA shall notify the insurers of changes in the nature, extent, or program for execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the Contractor the receipts for payment of the Adequacy of Insurances

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<sup>65</sup> The second sentence is recommended for use in IBRD-financed contracts.

premiums. No variations shall be made to the insurances by the MDA without the prior approval of the Contractor.

- Sub-Clause 25.3** (F-O) If and so far as the MDA fails to effect and keep in force any of the insurances referred to in Sub-Clause 25.1, then the Contractor may effect and keep in force any such insurance and pay any premium as may be necessary for that purpose and add the amount so paid to any monies due or to become due to the Contractor, or recover the same as a debt due from the MDA.
- Sub-Clause 25.4** (F-O) In the event that the Contractor or the MDA fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.
- Clauses 34 and 35** Note: It will generally be necessary to add a number of sub-clauses Labor to take account of the circumstances and locality of the Works, covering such matters as permits and registration of expatriate employees; repatriation to place of recruitment; provision of temporary housing for employees; requirements in respect of accommodation for staff of MDA and Engineer; standards of accommodation to be provided; provision of access roads, hospital, school, power, water, drainage, fire services, refuse collection, communal buildings, shops, and telephones; hours and conditions of working; rates of pay; compliance with labor legislation; and maintenance of records of safety and health.

Sample sub-clauses follow, to be numbered as appropriate:

#### Clause 34

- Sub-Clause 34** (WB-R) The Contractor shall pay rates of wages and observe Rates of Wages and Conditions of Labor conditions of labor not less favorable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or conditions of labor so established, the Contractor shall pay rates of wages and observe conditions of labor that are not less favorable than the general level of wages and conditions observed by other MDAs whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- Sub-Clause 34** (WB-R) The Contractor shall not recruit or attempt to recruit his Employment of Persons in the Service of Others staff and labor from among persons in the service of the MDA or the Engineer.
- Sub-Clause 34** (WB-R) The Contractor shall be responsible for the return to the

Repatriation of Labor		place where they were recruited or to their domicile of all such persons as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they shall have left the site or, in the case of persons who are not nationals of and have been recruited outside <i>[insert name of country]</i> shall have left <i>[insert name of country]</i> .
<b>Sub-Clause 34</b> Housing for Labor	(WB-R)	Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labor, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture, and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the MDA, the temporary camps or housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer.
<b>Sub-Clause 34</b> Accident Prevention Officer; Accidents	(WB-R)	The Contractor shall have on his staff on Site an officer dealing only with questions regarding the safety and protection against accidents of all staff and labor. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents.
<b>Sub-Clause 34</b> Health and Safety	(WB-R)	Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labor and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing, and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.
<b>Sub-Clause 34</b> Measures against Insect and Pest Nuisance	(WB-R)	The Contractor shall at all times take the necessary precautions to protect all staff and labor employed on the Site from insect nuisance, rats, and other pests and reduce the dangers to health and the general nuisance caused by the same. The Contractor shall provide his staff and labor

with suitable prophylactics for the prevention of malaria and shall take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the Engineer. The Contractor shall warn his staff and labor of the dangers of bilharzia and wild animals.

- Sub-Clause 34** (WB-R) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.  
Epidemics
- Sub-Clause 34** (WB-R) The Contractor shall make any necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in *[insert name of country]*. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regard to burial of any of his local employees who may die while engaged upon the Works.  
Burial of the Dead
- Sub-Clause 34** (WB-R) The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff, labor, and subcontractors for the purposes of or in connection with the Contract.  
Supply of Foodstuffs
- Sub-Clause 34** (WB-R) The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labor.  
Supply of Water
- Sub-Clause 34** (WB-R) The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances, and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter, or disposal by his subcontractors, agents, staff, or labor.  
Alcoholic Liquor or Drugs
- Sub-Clause 34** (WB-R) The Contractor shall not give, barter, or otherwise dispose of, to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.  
Arms and Ammunition
- Sub-Clause 34** (WB-R) The Contractor shall, in all dealings with his staff and labor, have due regard to all recognized festivals, days of  
Festivals and

Religious Customs	rest, and religious and other customs.
<b>Sub-Clause 34</b> Disorderly Conduct	(WB-R) The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct by or among his staff and labor and take all reasonable precautions for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same.
<b>Clause 35</b>	<p>Note: Additional sub-clauses may be desirable to cover circumstances that require the maintenance of particular records or the provision of certain specific reports.</p> <p>Sample sub-clauses—to be numbered as appropriate:</p>
<b>Sub-Clause 35</b> Records of Safety and Health	(WB-R) The Contractor shall maintain such records and make such reports concerning safety, health, and welfare of persons and damage to property as the Engineer may from time to time prescribe.
<b>Sub-Clause 35</b> Reporting of Accidents	(WB-R) The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means.
<b>Sub-Clause 47.3</b>	This text has been drawn from FIDIC Part II, Sub-Clause 47.3, combining the two example sub-clauses given, to incorporate in a shorter text the concept of completion by Sections.
<b>Sub-Clause 49.5</b>	The text remains the same as in FIDIC, but the periods have been left blank to afford the MDA an opportunity to insert times appropriate to the circumstances of each project.
<b>Sub-Clauses 52.1, 52.2, and 52.3</b>	The purpose of the additional provisions mandated by AGENCY for these three sub-clauses is to make sure that, when rates for variations are agreed, fixed, or determined in accordance with these sub-clauses, the amounts payable in various currencies are specified at the same time, and that in so doing, the parties (or the Engineer) will be guided by the actual or expected currencies of cost to the Contractor rather than being bound by the proportions of currencies in which the original Contract Price is payable (which could lead to serious distortions). Conversely, where varied work is varied at rates and prices already set out in the Contract, the first sentence to be added to Sub-Clause 52.1 provides that the payment for that type of varied work is to be made in the proportions of



currencies in which the original Contract Price is payable.

**Sub-Clauses 54.2  
and 54.5**

These sub-clauses of FIDIC Part II, about the vesting and re-vesting of the Contractor's Equipment, materials, etc., are not recommended for use in contracts, because they risk creating complex legal issues without adding much real protection for the MDA. The obligation of the Contractor to dedicate his Equipment, Temporary Works, and materials to the execution of the Works, and not to remove them from the Site without the Engineer's consent, is covered in Sub-Clause 54.1; it would seem to sufficiently protect the MDA.

**Clause 59**  
Materials  
Supplied by the  
MDA

AGENCY recommends against the MDA's supplying materials directly to the Contractor. The issues that may arise from the MDA's supplying construction materials include the following:

- (a) potentially higher bid prices, since bidders would not be able to access cheaper sources freely;
- (b) a dilution of the Contractor's responsibility in respect of quality of the finished Works, since he can blame defective materials for poor performance; although this may be mitigated by procedures for testing by the Contractor, testing itself can lead to another issue, that of
- (c) potential conflicts arising from differences of opinion between the Contractor and the Engineer regarding the acceptability of particular materials;
- (d) a dilution of the Contractor's responsibility for completion on time if materials are not delivered in the specified quantities at the specified dates; and
- (e) pricing problems if the MDA's sources for the materials are exhausted or break down, and the Contract does not include provisions for the Contractor to have priced those materials from different sources.

With the exception of explosives, if a MDA insists on supplying certain construction materials, AGENCY will consider this reserved procurement and the estimated cost of the materials thus supplied will be excluded from the total project costs to determine the amount that AGENCY will finance.

**Clause 60**

Although some of the sub-clauses in the FIDIC document have been retained (as shown in the margin of the relevant sub-clauses, under their headings), most of the sub-clauses have been changed to make

the process of payment more explicit and assist in the management of the Contract. It has also been necessary to include provisions to deal with multiple-currency contracts. Paragraph 60.8 (a) is mandatory and must be incorporated in Part II, even in the case when Clause 60 from FIDIC is retained, in which instance, it should be numbered as Sub-Clause 60.10.

- Sub-Clause 60.2** The last two paragraphs have been drawn from FIDIC Part I, Sub-Clause 60.2.
- Sub-Clause 60.5** The concept of the Limit of Retention Money (FIDIC Sub-Clause 60.2 [a]) has been eliminated, since it would be difficult to express in terms other than a percentage of the Contract Price. In highly inflationary circumstances, the Retention Money thus determined could become an insignificant amount.
- Sub-Clause 60.6** Corresponds to 60.3, FIDIC Part I, except that it allows substitution of retention money with a Bank guarantee after issue of the Taking-Over Certificate.
- Sub-Clause 60.8** The modified text (a) refers the time of payment to the submission of the monthly statement by the Contractor, (b) allows the Contractor a timely suspension of the Works in the event of Agency suspension of the fund or credit, and (c) incorporates the concept of interest accrual for delays in payment.
- Sub-Clause 60.10** Corresponds to 60.5, FIDIC Part I.
- Sub-Clause 60.11** Corresponds to 60.6, FIDIC Part I.
- Sub-Clause 60.12** Corresponds to 60.7, FIDIC Part I. Cross-reference renumbered.
- Sub-Clause 60.13** Corresponds to 60.8, FIDIC Part I.
- Sub-Clause 60.14** Corresponds to 60.9, FIDIC Part I. Cross-reference renumbered.
- Sub-Clause 63.1** The text given is that of the FIDIC General Conditions (1977), which would seem to provide a more comprehensive protection of the MDA's interests when the Contractor is in default. It has been edited only to substitute the new definition of Contractor's Equipment and to add Plant.
- MDAs should observe the footnote to this sub-clause and consult with their lawyers on any modification to the text necessary for this provision to be effective in the context of their own laws.
- Sub-Clause 65.2** This amendment is required for consistency with the amendments to

Sub-Clause 20.4.

**Sub-Clause 67** The introduction of the Disputes Settlement procedure follows *Guidelines for Procurement*, which states:

“In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.”

**Sub-Clause 69.1** Paragraph (d): MDA feels that, if required by public interest, the MDA should have the right to terminate the Contract for his convenience, and that such a termination should not be treated as a default of the MDA. It therefore does not accept Paragraph 69.1 (d) and, instead, requires the addition of a Sub-Clause 75.1, “Termination of Contract for MDA’s Convenience.”

**Clause 70** This clause has been inserted in preference to the sample given in FIDIC Part II to provide a more explicit statement of the formula and include the concepts of a family of formulae to cater for different types of work, broken down into formulae for the various currencies of payment.

The use of the method of Documentary Proof is discouraged except in special circumstances. If it becomes necessary, MDAs should refer to FIDIC Part II, Sub-Clause 70.1, **Second Alternative**.

**Sub-Clause 72.4** This sub-clause is added to allow for the eventuality that the Contractor diverts a significant portion of intended purchases from one currency area to another to benefit from exchange rate variations. In such a case, the MDA may wish to share in these benefits.

**Clauses 73 to end** Note: All clauses from Clause 73 onwards are additional to FIDIC Part I. As shown in the margin, some are drawn from unnumbered sub-clause examples given in FIDIC Part II.



## **SECTION XII. POSTQUALIFICATION**

The documents have been prepared assuming that prequalification has taken place. Exceptionally, with previous Agency approval, postqualification might be appropriate, and, in such a case, the following Section XII provides the necessary changes to the documents.

## Invitation for Bids

(without Prequalification)

### Notes on the Form of Invitation for Bids

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If bids are invited openly from contractors without using a prequalification procedure, the Invitation for Bids should be issued directly to the public (see *AGENCY Guidelines for Procurement*, paras. 2.7 and 2.8) as

- (a) a General Procurement notice (for procurement by ICB) in UN Development Business;
- (b) an advertisement in at least one newspaper of general circulation in the MDA's country and in the official gazette, if any;
- (c) an advertisement in *Development Business* and/or well-known technical magazines for large or important contracts; and
- (d) a letter addressed to contractors who, following the publication of the General Procurement Notice, have expressed interest in bidding for the Works.

Its purpose is to supply information to enable potential bidders to decide on their participation. Apart from the essential items listed in the standard documents, the Invitation for Bids should also indicate any important bid evaluation criteria (for example, the application of a margin of preference in bid evaluation).

The Specific Invitation for Bids (see sample) should be incorporated in the bidding documents and should be consistent with the information contained in the Bidding Data.

**SPECIFIC PROCUREMENT NOTICE  
SAMPLE FORMAT FOR INVITATION FOR BIDS**

[NAME OF COUNTRY]

[NAME OF PROJECT]

[BRIEF DESCRIPTION OF GOODS/WORKS]

Contract/Bid No.

This invitation for bids follows the general procurement notice for this project that appeared in *Development Business* No. [insert number] of [insert date].<sup>66</sup>

The [insert name of MDA] [has received/has applied for/intends to apply for] a [fund] from the [LSG] toward the cost of the [insert name of Project], and it intends to apply part of the proceeds of this [project] to payments under the contract for [insert name/no. of Contract].<sup>67</sup> The [insert name of implementing Agency] now invites sealed bids from eligible bidders for [insert description of goods or works to be procured].<sup>68</sup> The delivery/construction period is [insert number of days/months/years or dates].<sup>69</sup>

Bidding will be conducted through the international competitive bidding procedures specified in the Agency's *Guidelines*: , and is open to all bidders from eligible source countries as defined in the guidelines.<sup>70</sup>

Interested eligible bidders may obtain further information from and inspect the bidding documents at the [insert name of Agency] at the address below [state address at end of document] from [insert office hours].<sup>71</sup> A complete set of bidding documents in [insert name of language] may be purchased by interested bidders on the submission of a written application to the address below and upon payment of a nonrefundable fee<sup>72</sup> of [insert amount in local

<sup>66</sup> Day, month, year; for example, 31 January 1998.

<sup>67</sup> [Insert the following if applicable]. This Contract will be jointly financed by [insert name of cofinancing agency]. Bidding will be governed by the World Bank's eligibility rules and procedures.

<sup>68</sup> A brief description of the type(s) of goods or Works should be provided, including quantities, location of Project, and other information necessary to enable potential bidders to decide whether or not to respond to the invitation. Bidding documents may require bidders to have specific experience or capabilities; such restrictions should also be included in this paragraph.

<sup>69</sup> Insert this sentence if applicable.

<sup>70</sup> Occasionally, contracts may be financed out of special funds that would further restrict eligibility to a particular group of member countries. When this is the case, it should be mentioned in this paragraph. Also indicate any margin of preference that may be granted as specified in the loan or credit agreement and set forth in the bidding documents.

<sup>71</sup> For example, 0900 to 1200 hours.

<sup>72</sup> The fee, to defray printing and mailing/shipping costs, should be nominal.

currency] or in [insert amount in specified convertible currency]. The method of payment will be [insert method of payment].<sup>73</sup> The document will be sent by [insert delivery procedure].<sup>74</sup>

Bids must be delivered to the address below by [insert time and date]. All bids must be accompanied by a bid security of [insert amount in local currency or minimum percentage of bid price] or an equivalent amount in a freely convertible currency.<sup>75</sup> Late bids will be rejected. Bids will be opened in the presence of bidders' representatives who choose to attend at the address below<sup>76</sup> at [insert time and date].

[Insert name of office]

[Insert name of officer]

[Insert postal address and/or street address]

Tel: [Indicate country and city code]

Fax: [Indicate country and city code]

E-mail:

### Statement of Qualification

In the event of postqualification being required, bidders should be required to complete all the forms and tables of and provide all the information required by the *Standard Prequalification Document: Procurement of Works*, September 1999, (revised March 2000). The MDA must, in that case, provide the qualification criteria as indicated therein. Such approach requires modifications to Clauses 3 and 5 of the Instructions to Bidders and Bidding Data and prior approval by the Agency. This information will not be incorporated in the Contract.

### Qualification of the Bidder

Modification to Section IIA, Instructions to Bidders

To be used where prequalification *has not* taken place.

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<sup>73</sup> For example, cashier's check, direct deposit to specified account number, etc.

<sup>74</sup> The delivery procedure is usually airmail for overseas delivery and surface mail or courier for local delivery. If urgency or security dictates, courier services may be required for overseas delivery.

<sup>75</sup> The amount of bid security should be stated as a fixed amount or as a minimum percentage of the Bid Price. Alternatively, if a bid security is not required (often the case in supply contracts), the paragraph should so state.

<sup>76</sup> The office for bid opening may not necessarily be the same as that for inspection or issuance of documents or for bid submission. If they differ, each address must appear at the end of the notice and be numbered; as, for example, (1), (2), (3). The text in the paragraph would then refer to address (1), (2), etc. Only one office and its address may be specified for submission, and it should be near the place where bids will be opened.



**Sub-Clause 3.1 (c)** Delete.

Eligible Bidders

**Sub-Clauses 5.1 to 5.4** Delete and substitute the following:

**Sub-Clause 5.1** To be qualified for award of the Contract, bidders shall provide evidence satisfactory to the MDA of their capability and adequacy of resources to carry out the Contract effectively. Bids shall include the following documentation and information on the relevant Information Forms (IF) attached:

Qualification of the Bidder

- (a) copies of original documents defining the constitution or legal status, place of registration and principal place of business; written power of attorney of the signatory of the Bid to commit the bidder;
- (b) total annual turnover in the civil works construction business expressed as total of payment certificates for work performed in each of the last five years;
- (c) performance as prime contractor, management contractor, or proportionately as member of a joint venture or subcontractor, on works of a similar nature and complexity over the last five years, and details of other work in hand and contractual commitments;
- (d) major items of Contractor's Equipment proposed for carrying out the Contract;
- (e) the qualifications and experience of key personnel proposed for administration and execution of the Contract, both on and off site;
- (f) any proposals for subcontracting elements of the Works such that the total of subcontracting is more than 20 percent of the Bid Price;
- (g) detail proposals for subcontracting any highly specialized elements of the Works to named specialist subcontractors;
- (h) reports on the financial standing of the bidder including profit and loss statements, balance sheets and auditor's reports for the past five years, and an estimated financial projection for the next two years;
- (i) evidence of access to lines of credit and availability of other financial resources;
- (j) authority to seek references from the bidder's Agencyers;
- (k) information regarding any litigation or arbitration resulting from contracts executed by the bidder in the last five years or currently

under execution. The information shall include the names of the parties concerned, the disputed amount, cause of litigation, and matter in dispute; and

- (l) proposal of work methods and program, in sufficient detail to demonstrate the adequacy of the bidder's proposals to meet the technical specifications and the completion time referred to in Sub-Clause 1.2 above.

**Sub-Clause 5.2**

Bids submitted by a joint venture of two or more firm/Companies/companies as partners shall comply with the following requirements:

- (a) the Bid shall include all the information listed in Sub-Clauses 5.1 (a) to (e) and (h) to (k) above for each joint venture partner and 5.1 (f), (g), and (l) for the joint venture;
- (b) the Bid, and in case of a successful Bid, the Form of Agreement, shall be signed so as to be legally binding on all partners;
- (c) one of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- (d) the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture, and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- (e) all partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a statement to this effect shall be included in the authorization mentioned under (c) above, as well as in the Form of Bid and in the Form of Agreement (in case of a successful Bid); and
- (f) a copy of the Joint Venture Agreement entered into by all partners shall be submitted with the bid. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed Agreement.

**Sub-Clause 5.3**

For the purposes of this particular Contract, bidders shall meet the following minimum qualifying criteria:<sup>77</sup>

- (a) annual turnover in construction work, during the last five years,

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<sup>77</sup> Delete from or add to the list as appropriate.

of *[insert figure in international trading currency]*<sup>78</sup> equivalent;

- (b) successful experience as prime contractor, management contractor, partner in a joint venture, or subcontractor, in the execution of at least one project of a nature and complexity comparable to the Works within the last five years; this experience should include *[insert requirements]*;<sup>79</sup>
- (c) proposals for timely acquisition (own, lease, hire, etc.) of the following essential Contractor's Equipment: *[list equipment]*
- (d) a project manager with 10 years' experience in works of a comparable nature and complexity, including not less than five years as manager;<sup>80</sup>
- (e) liquid assets and/or evidence of access to or availability of credit facilities of no less than *[insert figure in international trading currency]* equivalent;<sup>81</sup> and

Note: For projects that are bid in separate contracts, on a "slice and package" basis, insert a new Sub-Clause 5.3 (f):

- (f) for the bidder to qualify for a package of contracts made up of this and other contracts, he must demonstrate having experience and resources sufficient to meet the aggregate of the qualifying criteria for the individual contracts that make up the package in question.

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<sup>78</sup> Usually not less than 2.0 times the estimated annual payments under the Contract.

<sup>79</sup> Indicate an annual production rate for the key construction activity (or activities) in this project, e.g., "One million m<sup>3</sup> of rock placed in rockfill dams in one year." The annual rate shown should be a percentage (say 80 percent) of the expected peak rate of construction for the key activity (or activities) in the Works.

<sup>80</sup> Add requirements for other key personnel as necessary.

<sup>81</sup> Usually the equivalent of the estimated cash flow over a number of months at the average (straight line distribution) construction rate, accessible or available after taking into account the financial requirements of existing commitments. Assuming payment by monthly interim certificates, the number of months is determined from the start of a work month as the total time needed by the LSG to pay an invoice, allowing time to prepare the invoice, for the Engineer's time to certify it, and a one-month contingency. The total period should not exceed six months.

- Sub-Clause 5.4** The figures for each of the partners of a joint venture shall be added together to determine the bidder's compliance with the minimum qualifying criteria set out in Sub-Clause 5.3 above.
- Sub-Clause 5.5** Domestic bidders and joint ventures of domestic bidders applying for eligibility for a 7.5 percent margin of preference in bid evaluation shall supply all information required to satisfy the criteria for eligibility as described in Clause 32 of these Instructions to Bidders.<sup>82</sup>
- Sub-Clause 5.6** The qualifications, capacity, and resources of proposed subcontractors will not be taken into account in assessing those of individual or joint venture bidders, unless they are named specialist subcontractors and the scope of their specialized participation in the Works is clearly defined in the bid.
- Bidding Data**  
(Section III) Delete section 5.1 "Prequalification information to be updated."

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<sup>82</sup> Delete Sub-Clause 5.5 where not applicable (see Clause 32).

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## **SECTION XIII. DISPUTES SETTLEMENT PROCEDURE<sup>83</sup>**

### ***(VERSION 1)***

#### **Disputes Review Board's Rules and Procedures**

(see Clause 67 of the Conditions of Particular Application)

1. Except for providing the services required hereunder, the Board Members shall not give any advice to either party or to the Engineer concerning conduct of the Works. The Board Members:

- (a) shall have no financial interest in any party to the Contract, or the Engineer, or a financial interest in the Contract, except for payment for services on the Board;
- (b) shall have had no previous employment by, or financial ties to, any party to the Contract, or the Engineer, except for fee-based consulting services on other projects, all of which must be disclosed in writing to both parties prior to appointment to the Board;
- (c) shall have disclosed in writing to both parties prior to appointment to the Board any and all recent or close professional or personal relationships with any director, officer, or employee of any party to the Contract, or the Engineer, and any and all prior involvement in the project to which the Contract relates;
- (d) shall not, while a Board Member, be employed whether as a consultant or otherwise by either party to the Contract, or the Engineer, except as a Board Member, without the prior consent of the parties and the other Board Members;
- (e) shall not, while a Board Member, engage in discussion or make any agreement with any party to the Contract, or with the Engineer, regarding employment whether as a consultant or otherwise either after the Contract is completed or after service as a Board Member is completed;
- (f) shall be and remain impartial and independent of the parties and shall disclose in writing to the MDA, the Contractor, the Engineer, and one another any fact or circumstance that might be such as to cause either the MDA or the Contractor to question the continued existence of the impartiality and independence required of Board Members; and
- (g) shall be fluent in the language of the Contract.

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<sup>83</sup> This Section XIII contains alternative Rules and Procedures and Declaration of Acceptance for the Disputes Review Board and Disputes Review Expert, respectively. The LSG shall select the version of the Rules and Procedures corresponding to the version of Sub-Clause 67.1 that was selected in the Conditions of Particular Application (and delete the other version from the final bidding documents).

2. Except for its participation in the Board's activities as provided in the Contract and in this Agreement none of the MDA, the Contractor, or the Engineer shall solicit advice or consultation from the Board or the Board Members on matters dealing with the conduct of the Works.
3. The Contractor shall:
  - (a) Furnish to each Board Member one copy of all documents that the Board may request including Contract documents, progress reports, variation orders, and other documents pertinent to the performance of the Contract.
  - (b) In cooperation with the MDA, coordinate the Site visits of the Board, including conference facilities, and secretarial and copying services.
4. The Board shall begin its activities following the signing of a Board Member's Declaration of Acceptance by all three Board Members, and it shall terminate these activities as set forth below:
  - (a) The Board shall terminate its regular activities when either (i) the Defects Liability Period referred to in Sub-Clause 49.1 (or, if there are more than one, the Defects Liability Period expiring last) has expired, or (ii) the MDA has expelled the Contractor from the Site pursuant to Sub-Clause 63.1, and when, in either case, the Board has communicated to the parties and the Engineer its Recommendations on all disputes previously referred to it.
  - (b) Once the Board has terminated its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it by either party. In case of such a referral, Board Members shall receive payments as provided in paragraphs 7 (a) (ii), (iii), and (iv).
5. Board Members shall not assign or subcontract any of their work under these Rules and Procedures. However, the Board may in its discretion decide to seek independent expert advice on a particular specialized issue to assist in reaching a Recommendation, and the cost of obtaining any such expert opinion(s) shall be shared equally by the MDA and the Contractor in accordance with the procedure specified in paragraph 7 (d) below.
6. The Board Members are independent contractors and not employees or agents of either the MDA or the Contractor.

7. Payments to the Board Members for their services shall be governed by the following provisions:

- (a) Each Board Member will receive payments as follows:
  - (i) A retainer fee per calendar month equivalent to three times the daily fee established from time to time for arbitrators under the Administrative and Financial Regulations of the International Centre for Settlement of Investment Disputes (the ICSID Arbitrator's Daily Fee), or such other retainer as the MDA and Contractor may agree in writing. This retainer shall be considered as payment in full for:
    - (A) Being available, on seven days' notice, for all hearings, Site visits, and other meetings of the Board.
    - (B) Being conversant with all project developments and maintaining relevant files.
    - (C) All office and overhead expenses such as secretarial services, photocopying, and office supplies (but not including telephone calls, faxes, and telexes) incurred in connection with the duties as a Board Member.
    - (D) All services performed hereunder except those performed during the days referred to in paragraph (ii) below.
  - (ii) A daily fee equivalent to the ICSID Arbitrator's Daily Fee, or such other daily fee as the MDA and Contractor may agree in writing. This daily fee shall only be payable in respect of the following days and shall be considered as payment in full for:
    - (A) Each day up to a maximum of two days of travel time in each direction for the journey between the Board Member's home and the Site or other location of a Board meeting.
    - (B) Each day on Site or other locations of a Board meeting.
  - (iii) Expenses. In addition to the above, all reasonable and necessary travel expenses (including less than first-class air fare, subsistence, and other direct travel expenses) as well as the cost of telephone calls, faxes, and telexes incurred in connection with the duties as Board Member shall be reimbursed against invoices. Receipts for all expenses in excess of US\$25.00 (U.S. Dollars Twenty Five) shall be provided.

- (iv) Reimbursement of any taxes that may be levied in the country of the Site on payments made to the Board Member (other than a national or permanent resident of the country of the Site) pursuant to this paragraph 8.
  - (b) Escalation. The retainer and fees shall remain fixed for the period of each Board Member's term.
  - (c) Phasing out of monthly retainer fee. Beginning with the next month after the Taking-Over Certificate referred to in Clause 48 (or, if there are more than one, the one issued last) has been issued, the Board Members shall receive only one-third of the monthly retainer fee. Beginning with the next month after the Board has terminated its regular activities pursuant to paragraph 4 (a) above, the Board members shall no longer receive any monthly retainer fee.
  - (d) Payments to the Board Members shall be shared equally by the MDA and the Contractor. The Contractor shall pay Members' invoices within 30 calendar days after receipt of such invoices and shall invoice the MDA (through the monthly statements to be submitted in accordance with Sub-Clause 60.1 of the General Conditions) for one-half of the amounts of such invoices. The MDA shall pay such Contractor's invoices within the time period specified in the Construction Contract for other payments to the Contractor by the MDA.
  - (e) Failure of either the MDA or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the Contract, entitling the nondefaulting party to take the measures set forth, respectively, in Clause 63 or Clause 69.
  - (f) Notwithstanding such event of default, and without waiver of rights therefrom, in the event that either the MDA or the Contractor fails to make payment in accordance with these Rules and Procedures, the other party may pay whatever amount may be required to finance the operation of the Board. The party making such payments, in addition to all other rights arising from such default, shall be entitled to reimbursement of all sums paid in excess of one-half of the amount required to maintain operation of the Board, plus all costs of obtaining such sums.
8. Board Site Visits:
- (a) The Board shall visit the Site and meet with representatives of the MDA and the Contractor and the Engineer at regular intervals, at times of critical construction events, at the written request of either party, and in any case not less than three times in any period of 12 months. The timing of Site visits shall be as agreed among the MDA, the Contractor, and the Board, but failing agreement shall be fixed by the Board.
  - (b) Site visits shall include an informal discussion of the status of the construction of the Works, an inspection of the Works, and the review of any Requests for



Recommendation made in accordance with paragraph 10 below. Site visits shall be attended by personnel from the MDA, the Contractor, and the Engineer.

- (c) At the conclusion of each Site visit, the Board shall prepare a report covering its activities during the visit and shall send copies to the parties and to the Engineer.

9. Procedure for Dispute Referral to the Board:

- (a) If either party objects to any action or inaction of the other party or the Engineer, the objecting party may file a written Notice of Dispute to the other party with a copy to the Engineer stating that it is given pursuant to Clause 67 and stating clearly and in detail the basis of the dispute.
- (b) The party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 7 days after receiving the response. Both parties are encouraged to pursue the matter further to attempt to amicably settle the dispute.
- (d) When it appears that the dispute cannot be resolved without the assistance of the Board, or if the party receiving the Notice of Dispute fails to provide a written response within 14 days after receipt of such Notice, either party may refer the dispute to the Board by written Request for Recommendation to the Board. The Request shall be addressed to the Chairman of the Board, with copies to the other Board Members, the other party, and the Engineer, and it shall state that it is made pursuant to Clause 67.
- (e) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the Board.
- (f) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board shall decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both parties be submitted to each Board Member before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.
- (g) During the hearing, the Contractor, the MDA, and the Engineer shall each have ample opportunity to be heard and to offer evidence. The Board's Recommendations for resolution of the dispute will be given in writing to the MDA, the Contractor, and the Engineer as soon as possible, and in any event not less than 56 days after receipt by the Chairman of the Board of the written Request for Recommendation.

10. Conduct of Hearings:

- (a) Normally hearings will be conducted at the Site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Private sessions of the Board may be held at any cost-effective location convenient to the Board.
- (b) The MDA, the Engineer, and the Contractor shall be given the opportunity to have representatives at all hearings.
- (c) During the hearings, no Board Member shall express any opinion concerning the merit of the respective arguments of the parties.
- (d) After the hearings are concluded, the Board shall meet privately to formulate its Recommendations. All Board deliberation shall be conducted in private, with all Members' individual views kept strictly confidential. The Board's Recommendations, together with an explanation of its reasoning, shall be submitted in writing to both parties and to the Engineer. The Recommendations shall be based on the pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.
- (e) The Board shall make every effort to reach a unanimous Recommendation. If this proves impossible, the majority shall decide, and the dissenting Member may prepare a written minority report for submission to both parties and to the Engineer.

11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, Site visits, and conduct of hearings, the Board shall have full and final authority. If a unanimous decision on any such matter proves impossible, the majority shall decide.

12. After having been selected and, where necessary, approved, each Board Member shall sign two copies of the following declaration and make one copy available each to the MDA and to the Contractor:

BOARD MEMBER’S DECLARATION OF ACCEPTANCE

WHEREAS

- (a) a Construction Contract (the Contract) for the *[name of project]* project has been signed on *[fill in date]* between *[name of MDA]* (the MDA) and *[name of Contractor]* (the Contractor);
- (b) Clause 67 of the Conditions of Particular Application of the Construction Contract provides for the establishment and operation of a Disputes Review Board (the Board);
- (c) the undersigned has been selected (and where required, approved) to serve as a Board Member on said Board;

NOW THEREFORE, the undersigned Board Member hereby declares as follows:

- 1. I accept the selection as a Board Member and agree to serve on the Board and to be bound by the provisions of Clause 67 of the Conditions of Particular Application of the Contract and the Disputes Review Board’s Rules and Procedures attached to the Conditions of Particular Application.
- 2. With respect to paragraph 1 of said Disputes Review Board’s Rules and Procedures, I declare
  - (a) that I have no financial interest of the kind referred to in subparagraph (a);
  - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
  - (c) that I have made to both parties any disclosures that may be required by subparagraphs (b) and (c).

BOARD MEMBER

\_\_\_\_\_

*[print name of Board Member]*

Date: \_\_\_\_\_

**(VERSION 2)**

**Rules and Procedures for the Functions of the Disputes Review Expert  
(DRE)**

(see Clause 67 of the Conditions of Particular Application)

1. Except for providing the services required hereunder, the DRE shall not give any advice to either party or to the Engineer concerning conduct of the Works. The DRE:
  - (a) shall have no financial interest in any party to the Contract, or the Engineer, or a financial interest in the Contract, except for payment for his services;
  - (b) shall have had no previous employment by, or financial ties to, any party to the Contract, or the Engineer, except for fee-based consulting services on other projects, all of which must be disclosed in writing to both parties prior to selection as DRE;
  - (c) shall have disclosed in writing to both parties prior to selection as DRE any and all recent or close professional or personal relationships with any director, officer, or employee of any party to the Contract, or the Engineer, and any and all prior involvement in the project to which the Contract relates;
  - (d) shall not, while serving as DRE, be employed whether as a consultant or otherwise by either party to the Contract, or the Engineer, except as a DRE, without the prior consent of the parties;
  - (e) shall not, while serving as DRE, engage in discussion or make any agreement with any party to the Contract, or with the Engineer, regarding employment whether as a consultant or otherwise either after the Contract is completed or after service as DRE is completed;
  - (f) shall be and remain impartial and independent of the parties and shall disclose in writing to the MDA, the Contractor, and the Engineer, any fact or circumstance that might be such as to cause either the MDA or the Contractor to question the continued existence of the impartiality and independence required of a DRE; and
  - (g) shall be fluent in the language of the Contract.
2. Except for its participation in DRE's activities as provided in the Contract and in this Agreement, none of the MDA, the Contractor, or the Engineer shall solicit advice or consultation from the DRE on matters dealing with the conduct of the Works.
3. The Contractor shall:

- (a) Furnish to the DRE a copy of all documents that he may request including Contract documents, progress reports, variation orders, and other documents pertinent to the performance of the Contract.
  - (b) In cooperation with the MDA, coordinate the Site visits of the DRE, including conference facilities, and secretarial and copying services.
4. The DRE shall begin his activities following the signing of a DRE's Declaration of Acceptance, and he shall terminate these activities as set forth below:
  - (a) The DRE shall terminate his regular activities when either (i) the Defects Liability Period referred to in Sub-Clause 49.1 (or, if there are more than one, the Defects Liability Period expiring last) has expired, or (ii) the MDA has expelled the Contractor from the Site pursuant to Sub-Clause 63.1, and when, in either case, the DRE has communicated to the parties and the Engineer his Recommendations on all disputes previously referred to him.
  - (b) Once the DRE has terminated his regular activities as provided by the previous paragraph, the DRE shall remain available to process any dispute referred to him by either party. In case of such a referral, the DRE shall receive payments as provided in paragraphs 7 (a) (ii), (iii), and (iv).
5. The DRE shall not assign or subcontract any of his work under these Rules and Procedures. However, the DRE may in his/her discretion decide to seek independent expert advice on a particular specialized issue to assist in reaching a Recommendation, and the cost of obtaining any such expert opinion(s) shall be shared equally by the MDA and the Contractor in accordance with the procedure specified in paragraph 7 (d) below.
6. The DRE is an independent contractor and not an employee or agent of either the MDA or the Contractor.
7. Payments to the DRE for his services shall be governed by the following provisions:
  - (a) The DRE will receive payments as follows:
    - (i) A retainer fee per calendar month equivalent to three times the daily fee established from time to time for arbitrators under the Administrative and Financial Regulations of the International Centre for Settlement of Investment Disputes (the ICSID Arbitrator's Daily Fee), or such other retainer as the MDA and Contractor may agree in writing. This retainer shall be considered as payment in full for:
      - (A) Being available, on seven days' notice, for Site visits requested by either party.

- (B) Being conversant with all project developments and maintaining relevant files.
  - (C) All office and overhead expenses such as secretarial services, photocopying, and office supplies (but not including telephone calls, faxes, and telexes) incurred in connection with the duties as a DRE.
  - (D) All services performed hereunder except those performed during the days referred to in paragraph (ii) below.
- (ii) A daily fee equivalent to the ICSID Arbitrator's Daily Fee, or such other daily fee as the MDA and Contractor may agree in writing. This daily fee shall only be payable in respect of the following days and shall be considered as payment in full for:
- (A) Each day up to a maximum of two days of travel time in each direction for the journey between the DRE's home and the Site.
  - (B) Each day on Site.
- (iii) Expenses. In addition to the above, all reasonable and necessary travel expenses (including less than first-class air fare, subsistence, and other direct travel expenses) as well as the cost of telephone calls, faxes, and telexes incurred in connection with the duties as DRE shall be reimbursed against invoices. Receipts for all expenses in excess of US\$25.00 (U.S. Dollars Twenty Five) shall be provided.
- (iv) Reimbursement of any taxes that may be levied in the country of the Site on payments made to the DRE (other than a national or permanent resident of the country of the Site) pursuant to this paragraph 8.
- (b) Escalation. The retainer and fees shall remain fixed for the period of the DRE's term.
- (c) Phasing out of monthly retainer fee. Beginning with the next month after the Taking-Over Certificate referred to in Clause 48 (or, if there are more than one, the one issued last) has been issued, the DRE shall receive only one-third of the monthly retainer fee. Beginning with the next month after the Board has terminated its regular activities pursuant to paragraph 4 (a) above, the DRE shall no longer receive any monthly retainer fee.
- (d) Payments to the DRE shall be shared equally by the MDA and the Contractor. The Contractor shall pay the DRE's invoices within 30 calendar days after receipt of such invoices and shall invoice the MDA (through the monthly statements to be submitted in accordance with Sub-Clause 60.1 of the General Conditions) for one-half of the amounts of such invoices. The MDA shall pay such Contractor's

invoices within the time period specified in the Construction Contract for other payments to the Contractor by the MDA.

- (e) Failure of either the MDA or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the Contract, entitling the nondefaulting party to take the measures set forth, respectively, in Clause 63 or Clause 69.
- (f) Notwithstanding such event of default, and without waiver of rights therefrom, in the event that either the MDA or the Contractor fails to make payment in accordance with these Rules and Procedures, the other party may pay whatever amount may be required to finance the activities of the DRE. The party making such payments, in addition to all other rights arising from such default, shall be entitled to reimbursement of all sums paid in excess of one-half of the amount required to finance the activities of the DRE, plus all costs of obtaining such sums.

8. DRE Site Visits:

- (a) The DRE shall visit the Site and meet with representatives of the MDA and the Contractor and the Engineer at regular intervals, at times of critical construction events, at the written request of either party, and in any case not less than three times in any period of 12 months. The timing of Site visits shall be as agreed among the MDA, the Contractor, and the DRE, but failing agreement shall be fixed by the DRE.
- (b) Site visits shall include an informal discussion of the status of the construction of the Works, an inspection of the Works, and the review of any Requests for Recommendation made in accordance with paragraph 10 below. Site visits shall be attended by personnel from the MDA, the Contractor, and the Engineer.
- (c) At the conclusion of each Site visit, the DRE shall prepare a report covering his activities during the visit and shall send copies to the parties and to the Engineer.

9. Procedure for Dispute Referral to the DRE:

- (a) If either party objects to any action or inaction of the other party or the Engineer, the objecting party may file a written Notice of Dispute to the other party with a copy to the Engineer stating that it is given pursuant to Clause 67 and stating clearly and in detail the basis of the dispute.
- (b) The party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within seven days after receiving

- the response. Both parties are encouraged to pursue the matter further to attempt to amicably settle the dispute.
- (d) When it appears that the dispute cannot be resolved without the assistance of the DRE, or if the party receiving the Notice of Dispute fails to provide a written response within 14 days after receipt of such Notice, either party may refer the dispute to the DRE by written Request for Recommendation to the DRE. The Request shall be addressed to the DRE, with copies to the other party and the Engineer, and it shall state that it is made pursuant to Clause 67.
  - (e) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the DRE.
  - (f) When a dispute is referred to the DRE, and the DRE is satisfied that the dispute requires his assistance, the DRE shall decide when to conduct a hearing on the dispute. The DRE may request that written documentation and arguments from both parties be submitted to him before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.
  - (g) During the hearing, the Contractor, the MDA and the Engineer shall each have ample opportunity to be heard and to offer evidence. The DRE's Recommendations for resolution of the dispute will be given in writing to the MDA, the Contractor, and the Engineer as soon as possible, and in any event not less than 56 days after receipt by the DRE of the written Request for Recommendation.

#### 10. Conduct of Hearings:

- (a) Normally hearings will be conducted at the Site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the DRE.
- (b) The MDA, the Engineer, and the Contractor shall be given the opportunity to have representatives at all hearings.
- (c) During the hearings, the DRE shall not express any opinion concerning the merit of the respective arguments of the parties.
- (d) After the hearings are concluded, the DRE shall formulate his Recommendations and shall submit them in writing, together with an explanation of his reasoning, to both parties and to the Engineer. The Recommendations shall be based on the pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.



11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, Site visits, and conduct of hearings, the DRE shall have full and final authority.

12. After having been selected, the DRE shall sign two copies of the following declaration and make one copy available each to the MDA and to the Contractor:

## DISPUTES REVIEW EXPERT'S DECLARATION OF ACCEPTANCE

## WHEREAS

- (a) a Construction Contract (the Contract) for the *[name of Project]* project has been signed on *[fill in date]* between *[name of MDA]* (the MDA) and *[name of Contractor]* (the Contractor);
- (b) Clause 67 of the Conditions of Particular Application of the Construction Contract provides for the selection of a Disputes Review Expert (DRE);
- (c) the undersigned has been selected to serve as the DRE;

NOW THEREFORE, the undersigned DRE hereby declares as follows:

1. I accept the selection as a DRE and agree to serve in this capacity and to be bound by the provisions of Clause 67 of the Conditions of Particular Application of the Contract and the Disputes Review Expert's Rules and Procedures attached to the Conditions of Particular Application.
2. With respect to paragraph 1 of said Disputes Review Expert's Rules and Procedures, I declare
  - (a) that I have no financial interest of the kind referred to in subparagraph (a);
  - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
  - (c) that I have made to both parties any disclosures that may be required by subparagraphs (b) and (c).

DISPUTES REVIEW EXPERT

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\_\_\_\_\_ *[print name of DRE]*  
 Date: \_\_\_\_\_

**SECTION XIV. ELIGIBILITY FOR THE PROVISION OF  
GOODS, WORKS, AND SERVICES IN LSG-  
FINANCED PROCUREMENT**

## **Public Information Center<sup>84</sup>**

### **Eligibility for the Provision of Goods, Works, and Services in LSG- financed Procurement**

In addition, bidders, goods, and services from other countries or territories may be declared ineligible by a provision in bidding documents if the country has excluded them by a law, official regulation, or act of compliance meeting the requirements of paragraph 1.8 (a) of the *Guidelines*: .

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<sup>84</sup> The most current listing of eligible countries can be viewed on the Public Information Center's Web page at: <http://www.worldbank.org/html/pic/PROCURE.html>. A list of firms debarred from participating in World Bank projects is available at: <http://www.worldbank.org/html/opr/procure/debarr.html>.