

Standard Bidding Documents

Procurement of Works

FIDIC

This electronic document prepared by **The African Development Bank** is intended to fulfill the objectives of para. **3.5.2 of the Rules of Procedure for Procurement of Goods and Works, September 1996 edition**:

“Borrowers shall use the appropriate Standard Bidding Documents (SBDs) issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address country and project specific issues. Any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the Bank’s SBDs.”

Users of this electronic document should ensure the above requirements are complied with.

The African Development Bank

September 1996

incorporating the CORRIGENDA dated June 1995

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IntroductionIntroductionIntroductionIntroductionIntroduct ionIntroductionIntroductionIntroduction

These Standard Bidding Documents for Works (SBDW) has been prepared by the World Bank **and adapted by The African Development Bank Group** for use by borrowers 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 **African Development Bank Group which includes the African Development Fund and the Nigeria Trust Fund** hereinafter called “the Bank”), which are estimated to cost more than US\$10 million (including contingency allowance) unless the Bank agrees to the use of other Bank Standard Bidding Documents on a case-by-case basis. (The Bank has also issued Standard Bidding Documents for smaller works ~~and will issue a French version of the SBDW in 1995.~~)

This edition of the SBDW is based on Part I of the fourth edition of the International Federation of Consulting Engineers (*Federation Internationale des Ingenieurs Conseils*, or FIDIC) *Conditions of Contract for Works of Civil Engineering Construction* (1987, reprinted 1992 with amendments), as well as changes to it resulting from the Bank’s experience. Section 11, Explanatory Notes, explains the differences between Part II of the Conditions of Contract, as included in this SBDW, and Part II of FIDIC.

In order to simplify the preparation of bidding documents for each procurement, the SBDW groups the provisions that shall remain unchanged in Section 2, Instructions to Bidders, and in Section 4, Part I—General Conditions of Contract. Data and provisions specific to each procurement and contract shall be included in Section 3, Bidding Data, in Section 5, Part II—Conditions of Particular Application, and in the Appendix to Bid included in Section 7. The documents also require Technical Specifications (Section 6), Drawings (Section 10), Bill of Quantities (Section 8), 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 ~~World~~ Bank. Prequalification shall be followed for all major works. Exceptionally, in the absence of prequalification, postqualification shall be followed, with prior agreement by the Bank. Postqualification procedures are covered in Section 12.

A major change has been introduced with respect to the “quasi-judicial” role of the Engineer, as set forth in Subsection 67.1 of Part I of FIDIC. For contracts estimated to cost more than US\$50 million (including contingency allowances), it will be mandatory to refer disputes in the first instance to a three-member Disputes Review Board (DRB) rather than to the Engineer. For contracts estimated to cost less than US\$50 million, Employers will have the option of (i) providing for a DRB, (ii) referring disputes to one Disputes Review Expert (rather than to the three-member DRB), or (iii) continuing to provide for the Engineer’s Decision under Sub-Clause 67.1 of FIDIC Part I, the third option being available *only* if the Engineer is independent from the Employer.

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) All the notes, except those applying to forms to be filled in by bidders, including notes contained in single-bordered boxes, are intended only as information for the person drafting the bidding documents and should not be included in the final documents.
- (b) Specific details, such as the *name of the Employer* 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.

- (c) 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.
- (d) Except where indicated as mandatory, clauses included in the Conditions of Particular Application are illustrative of the provisions that should be drafted by the Employer 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.

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The Invitation for Bids for contracts, subject to prequalification, is sent only to firms determined by the Borrower to be qualified in accordance with the Borrower’s prequalification procedure. This procedure must be reviewed and commented on by the Bank ~~financing from the Bank~~ if the potential contract is to be eligible for **financing from the Bank**.

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.

Section I. Invitation for Bids (IFB¹)

Form of Invitation for Bids

[letterhead paper of the Employer]¹

_____ [date]

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

Reference: **ADB** Loan No., Contract Name, and Identification No.

Dear Sirs:

1. We hereby inform you that you are prequalified for bidding for the above cited contract.²
2. We now invite you and other prequalified bidders to submit sealed bids for the execution and completion of the cited contract.²
3. You may obtain further information from, and inspect and acquire the bidding documents, at our offices at *[mailing address, street address, and cable/telex/facsimile numbers]*.³
4. A complete set of bidding documents may be purchased by you at the above office, and upon payment of a nonrefundable fee of *[insert amount and currency]*.⁴
5. 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.⁵

¹ *The Borrower and the Employer may be the same or different entities. The text of the Invitation for Bids and the texts of the other documents herein must be footnoted to indicate which agency will act as the Employer.*

² Where bids are called concurrently for several contracts on a "slice and package" basis, substitute "contracts" and add the following at the end of the second paragraph:

"Bidders may bid for one or several contracts, as further defined in the bidding documents, depending on the volume of work for which they are prequalified."

³ The office for inquiries and issue of bidding documents and the office for Bid submission may or may not be the same. The place of Bid Opening may also differ and, if so, should be identified.

⁴ The chargeable fee should only be nominal, to cover reproduction and mailing costs. An amount of between US\$50 and US\$500 equivalent is considered appropriate, depending on the size and complexity of the works and the bidding documents.

⁵ Coordinate this paragraph with Clause 25 of Section II, Instructions to Bidders, "Bid Opening." Also see footnote 3.

6. Please confirm receipt of this letter immediately in writing by cable, fax, or telex. 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

Employer

Section I. Invitation for Bids (IFB)

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Section II provides the information necessary for bidders to prepare responsive bids in accordance with the requirements of the Employer. 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 which 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 Employer 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

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1. **Scope of Bid**
 - 1.1 The Employer, as defined in the Bidding Data and Appendix to Bid, hereinafter “the Employer,” wishes to receive bids for the construction of Works, as described in Sections 5, 6, 7, 8, and 10 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 Borrower named in the Bidding Data has applied for or received a loan or credit (hereinafter called “loan”) **African Development Bank Group, which includes the African Development Fund and the Nigeria Trust Fund** (hereinafter called “the Bank”) in various currencies equivalent to the amount in U.S. dollars indicated in the Bidding Data towards the cost of the Project specified in the Bidding Data, and the Borrower intends to apply a part of the proceeds of this loan to eligible payments under the contract for which these bidding documents are issued.
 - 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. ~~The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, Plant, or materials, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.~~ No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.
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 three of the following requirements:
 - (a) A bidder shall be from an eligible source country as defined under the **Bank's Rules of Procedure for Procurement of Goods and Works, dated September 1996, hereinafter referenced to as the ADB Rules for Procurement.**
 - (b) A bidder shall not be affiliated with a firm or entity

- (i) that has provided consulting services related to the Works to either the Employer or the Borrower 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 Employer or Borrower as Engineer for the contract.
 - (c) A bidder shall be prequalified for the contract as notified by the Employer.
- 3.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer as the Employer shall reasonably request.
- 3.3 Majority publicly-owned enterprises from the Borrower country may be eligible to qualify if, in addition to meeting all the above requirements, they are also legally and financially autonomous, operate under commercial law and are not a dependent agency of the Borrower or sub-Borrower.
- 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 **ADB Rules for Procurement**, 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 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

Section II. Instructions to Bidders

- (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 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 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 agreement entered into by the joint venture partners shall be submitted with the bid.
- 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, and joint ventures of domestic and foreign Bidders applying for eligibility for a 7½ 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 Each bidder shall submit only one bid either by himself, or as a partner in a joint venture. A bidder who submits or participates in more than one bid (other than alternatives pursuant to Clause 18) will 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 Employer 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 Employer 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 Employer 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 Employer may conduct a Site visit concurrently with the pre-bid meeting referred to in Clause 19.

B. Bidding DocumentsB. Bidding DocumentsB. Bidding DocumentsB. Bidding DocumentsB. Bidding DocumentsB. Bidding DocumentsB. Bidding DocumentsB. 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
Section IX.	Form of Agreement, Forms of Performance Security, and Advance Payment Bank Guarantee
Section X.	Drawings
Section XI.	Explanatory Notes
Section XII.	Postqualification
Section XIII.	Disputes Resolution Procedure

10. Clarification of Bidding Documents

- 10.1A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the Employer's address indicated in the Bidding Data. The Employer will respond to any request for clarification which he receives earlier than 28 days prior to the deadline for submission of bids. Copies of the Employer'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

- 11.1 At any time prior to the deadline for submission of bids, the Employer may

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Bidding Documents

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 or by cable to all purchasers of the bidding documents. Prospective bidders shall promptly acknowledge receipt of each Addendum by cable to the Employer.
- 11.3 To give prospective bidders reasonable time in which to take an Addendum into account in preparing their bids, the Employer shall extend as necessary the deadline for submission of bids, in accordance with Clause 22.

C. Preparation of BidsC. Preparation of BidsC. Preparation of BidsC. Preparation of BidsC. Preparation of BidsC. Preparation of BidsC. Preparation of BidsC. 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 Employer shall be written in the bid language stipulated in the Bidding Data and Conditions of Particular Application. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the bid, the translation shall prevail.
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 7 and 8 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 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. Items against which no rate or price is entered by the bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
 - 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 Employer may require the bidder to justify its proposed weightings.
- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the bid shall follow Option A or B, as specified in the Bidding Data.
- Option A:
Bidders quote
entirely in local
currency**
- 15.2 The unit rates and the prices shall be quoted by the bidder entirely in the currency of the Employer'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 Employer'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 Bank. ~~For the purpose of this clause, the European Currency Unit (ECU) is also considered an eligible currency.~~
- 15.3 The rates of exchange to be used by the bidder in arriving at the local currency equivalent and the percentage(s) mentioned in para. 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.
- 15.4 Bidders shall indicate their expected foreign currency requirements in the Appendix to Bid.
- 15.5 Bidders may be required by the Employer 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.
- 15.6 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 Employer 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.
- Option B:
Bidders quote in**
- 15.2 The unit rates and prices shall be quoted by the bidder separately in the following currencies:

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local and foreign currencies

(a) for those inputs to the Works which the bidder expects to supply from within the Employer's country, in the currency of Employer's country specified in the Bidding Data and Conditions of Particular Application; and

(b) for those inputs to the Works which the bidder expects to supply from outside the Employer's country (referred to as "the foreign currency requirements") **in the currency of the Bidder's home country or in a currency of any eligible member country widely used in international trade, always provided that a Bidder expecting expenditures in currency (ies) other than those stated in (a) or (b) for foreign currency requirements, and wishing to be paid accordingly, shall indicate the relevant currencies and percentages in the Bid .**

15.3 The rates of exchange to be used by the bidder in arriving at the local currency equivalent and the percentage(s) mentioned in para. 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.

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

15.5 Bidders may be required by the Employer 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.

15.6 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 Employer 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 date of bid opening specified in Clause 25.

16.2 In exceptional circumstances, prior to expiry of the original bid validity period, the Employer 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 Employer's country, or the equivalent amount in a freely convertible currency.

17.2 The Bid Security shall, at the bidder's option, be in the form of a certified check, letter of credit, or a bank guarantee from a reputable bank selected by the bidder and located in any eligible country. The format of the bank guarantee shall be in accordance with the form of bid security included in Section 7; other formats may be permitted, subject to the prior approval of the Employer. Bid security shall remain valid for a period of 28 days beyond the original validity period for the bid, and beyond any period of extension subsequently requested under Sub-Clause 16.2.

17.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer as nonresponsive. The bid security of a joint venture must be in the name of the joint venture submitting the bid.

17.4 The Bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the period of bid validity.

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

17.6 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

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

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different times for completion.

18.2 Except as provided under Clause 18.3 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first price the Employer's design as described in the bidding documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, 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 Employer.

18.3 When bidders are permitted to submit alternative technical solutions for specified parts of the Works, such parts shall be described in Section 6, 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 Employer 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 which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 11 and not through the minutes of the pre-bid meeting.

19.5 Nonattendance 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, bound with the section containing the Form of Bid and Appendix to Bid, and 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

Sub-Clauses 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.

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**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 Employer 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 Employer will assume no responsibility for the misplacement or premature opening of the bid. If the outer envelope discloses the bidder’s identity, the Employer 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 Employer at the address specified in Subclause 21.2 no later than the time and date stipulated in the Bidding Data.

- 22.2 The Employer 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 Employer 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 Employer after the deadline for submission of bids prescribed in Clause 22 will be returned unopened to the bidder.

Section II. Instructions to Bidders

24. Modification, Substitution, and Withdrawal of Bids

- 24.1 The bidder may modify, substitute, or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of bids.
- 24.2 The bidder's modification, substitution, 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 24.2 and 29.2.
- 24.4 Except as provided in Sub-Clause 24.2, 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.

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25. Bid Opening

- 25.1 The Employer 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" and "substitution" shall be opened first and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal ~~and~~ has been submitted pursuant to Clause 24 shall not be opened.
- 25.3 The bidders' names, the Bid Prices, including any alternative Bid Price or deviation, any discounts, bid modifications and withdrawals, ~~and~~ the presence (or absence) of bid security, ~~and any such other details as the Employer may consider appropriate~~, will be announced by the Employer at the opening. **Further, other details as the Employer, at its discretion, may consider appropriate shall also be announced and recorded.** Subsequently, all envelopes marked "modification" shall be opened and the submissions therein read out in appropriate detail. No bid shall be rejected at bid opening except for late bids pursuant to Clause 23.
- 25.4 Bids or modifications not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances. **In particular, any discount offered by a Bidder which is not read out at the bid opening shall not be considered further.**

- 25.5 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 25.3.
- 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 Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of bids, the Employer 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 or by cable, 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 Employer in the evaluation of the bids in accordance with Clause 29.
- 28. Examination of Bids and Determination of Responsiveness**
- 28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid (a) meets the eligibility criteria of the Bank; (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 substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 28.2. Furthermore, the bidder shall, if required, provide substantiation that the Employer 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) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer'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 Employer, 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 Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and

Section II. Instructions to Bidders

- (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 Employer 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 Employer 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 Sub-Clause 17.6 (b).

30. Conversion to Single Currency for Comparison of Bids

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

- 30.1 For comparison of bids, the Bid Price 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 Clause 15.3.

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

- (a) the currency of the Employer's 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;

or

- (b) a currency widely used in international trade, such as the U.S. dollar, stipulated in the Bidding Data, at the selling rate of exchange published in the international press as stipulated in the Bidding Data on the date stipulated in the Bidding Data, for the amounts payable in foreign currency; and, at the selling exchange rate established for similar transactions by the same authority specified in Clause 30.2(a) above on the date specified in the Bidding Data for the amount payable in the currency of the Employer's country.

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

- 30.1 The Employer will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:

- (a) the currency of the Employer's 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;

or

- (b) a currency widely used in international trade, such as the U.S. dollar, stipulated in the Bidding Data, at the selling rate of exchange published in the international press as stipulated in the Bidding Data on the date stipulated in the Bidding Data, for the amounts payable in foreign currency; and, at the selling exchange rate established for similar transactions by the same authority specified in Clause 30.2(a) above on the date specified in the Bidding Data for the amount payable in the currency of the Employer's country.

31. Evaluation and Comparison of Bids

- 31.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 28.
- 31.2 In evaluating the bids, the Employer 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, but including Daywork, where priced competitively;
 - (c) converting the amount resulting from applying (a) to (b) above 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 (Clause 13.2).
- 31.3 The Employer 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 Employer may require the bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking

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into consideration the schedule of estimated contract payments, the Employer 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 Employer against financial loss in the event of default of the successful bidder under the contract.

32. Preference for Domestic or Regional Bidders

32. If so indicated in the Bidding Data, domestic **or regional** contractors may receive a margin of preference in Bid evaluation, for which **the following option A shall apply if domestic preference is granted, and, alternatively, Option B if regional preference is granted.**

Option A: Domestic Preference

Domestic **contractors** shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a **10** per cent margin of preference in the comparison of their bids with those of contractors who do not qualify for the preference, **A contractor is deemed domestic if:**

- (a) **its legal constitution is in accordance with the laws of the Borrower's country where it must have its registered office and undertake the majority of its activities; and**
- (b) **the majority of the capital shares are held by nationals of that country, and**
- (c) **the majority of the members of the board of directors are nationals of that country, and**
- (d) **not less than 50 per cent of the key personnel are nationals of that country, and**
- (e) **there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic contractor will accrue or be paid to persons not nationals of that country or to firms which would not be eligible under this Sub-Clause.³⁶**

- 32.3 Joint ventures between domestic and foreign firms may be eligible for the

margin of preference provided the domestic partner or partners

- (a) individually satisfy the above criteria of eligibility for the preference;
- (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
- (c) will, under the arrangements proposed, carry out at least
50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the domestic partner (s) (always provided that the domestic partner or partners are qualified to carry out that amount of work, ~~in accordance with the criteria of Sub Clause 4.3~~); and
- (d) satisfy any other criteria specified for the purpose of domestic preference eligibility, as specified in the Building Data.

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

- (a) Responsive bids will be classified into the following groups:
 - (i) Group A: bids offered by domestic bidders and joint ventures meeting the respective criteria of Sub-Clauses 30.2 and 30.3 above; and
 - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to **10** percent of the evaluated Bid prices determined in accordance with Clause 31.2 (a), (b), and (d), will be added to all bids classified in Group B.

Option B: Regional Preference

32.2 **Contractors from regional Member countries that have joined the Borrower's country in a regional cooperation agreement designed to foster economic integration by a customs union or free trade area (in this Clause referred to as "Regional contractors")** shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½-percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. A contractor is deemed to be a **Regional contractor if:**

- (a) **it is legally constituted in accordance with the laws of a regional Member country which is party to the established regional**

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preferential arrangement and has a registered office in that particular country and does business mainly in the same or other countries that are parties to the said regional preferential arrangement;

- (b) at least a majority of its capital shares is owned by nationals of countries that are parties to the said regional preferential arrangement;
- (c) the majority of the members of the board of directors are nationals of countries that are parties to the said regional arrangement;
- (d) not less than 50 percent of its key personnel are nationals of countries that are parties to the said regional preferential arrangement; and
- (e) there are no arrangements whereby any major part of the net profits of other tangible benefits of the Regional contractor or will accrue or be paid to persons not nationals of the countries which are parties to the said regional preferential arrangement or to firms that would not be eligible under this Sub-Clause.³⁶

32.3 Joint ventures between **Regional contractors** and foreign firms may be eligible for the margin of preference provided the **Regional contractor or contractors** partner or partners

- (a) individually satisfy the above criteria of eligibility for the preference;
- (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
- (c) will, under the arrangements proposed, carry out at least 50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the **Regional contractor (s)** are qualified to carry out that amount of works, in accordance with the criteria of Sub-Clause 4.3); and
- (d) satisfy any other criteria specified for the purpose of **regional** preference eligibility, as specified in the Bidding Data.

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

- (a) Responsive bids will be classified into the following groups:
 - (i) Group A: bids offered by **Regional contractors** and joint ventures meeting the respective criteria of Sub-Clauses 32.2

and 32.3 above; and

- (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7 $\frac{1}{2}$ percent of the evaluated Bid prices determined in accordance with Clause 31.2 (a), (b), and (d), will be added to all bids classified in Group B.

End of Option 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 Clause 32.4.

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33. Award

- 33.1 Subject to Clause 34, the Employer 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 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. Employer’s Right to Accept any Bid and to Reject any or all Bids

- 34.1 The Employer 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 Employer’s action.

35. Notification of Award

- 35.1 Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder by cable confirmed by registered letter that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) shall specify the sum which the Employer 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

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Contract called “the Contract Price”).

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

36. Signing of Agreement

36.1 At the same time that the Employer notifies the successful bidder that its bid has been accepted, the Employer will send the bidder the Agreement in the form provided in the bidding

documents, incorporating all agreements between the parties.

36.2 Within 28 days of receipt of the Agreement, the successful bidder shall sign the Agreement and return it to the Employer, together with the required performance security.

36.3 Upon fulfillment of Sub-Clause 36.2, the Employer 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 Clause 17.4.

37. Performance Security

37.1 Within 28 days of receipt of the Letter of Acceptance from the Employer, the successful bidder shall furnish to the Employer a performance security in the form stipulated in the Bidding Data and the Conditions of Contract. The form of performance security provided in Section 9 of the bidding documents may be used or some other form acceptable to the Employer.

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 Employer or by a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the prior agreement of the Employer directly by a foreign bank acceptable to the Employer.

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 Employer.

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 Employer may take under the contract, and the Employer may resort to awarding the contract to the next ranked bidder.

38. Disputes Review Board

38.1 The method of dispute resolution is as indicated in the Bidding Data. If the selected method is a Disputes Review Board or Disputes Review Expert, the Employer proposes the person named in the Bidding Data to be appointed as a Board member. If the bidder disagrees with this proposal, the bidder should so state in the bid. If the Employer and the selected bidder cannot agree to the appointments of the two initial Board members, then the appointments will be

made by the Appointing Authority designated in the Conditions of Particular Application at the request of either party.

**Section III. Bidding DataSection III. Bidding
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Section III is intended to assist the Employer 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 Employer should provide in the Bidding Data information and requirements specific to the circumstances of the Employer, 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

This section should be filled in by the Employer 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. Whenever there is a conflict, the provisions herein shall prevail over those in the Instructions to Bidders. *[Instructions are provided, as needed, in italics.]*

Instructions to Bidders Clause Reference

- 1.1 Summary of the Works.
[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.]
- 1.1 Name and address of the Employer.
- 1.2 Period of Completion.
- 2.1 Name of the Borrower.
[Insert name of Borrower and statement of relationship with the Employer, if different from the Borrower. This insertion should correspond to the information provided in the Invitation for Bids.]
- 2.1 Name and description of the Project and amount and type of the Bank financing.
- 5.1 Prequalification information to be updated.
[Indicate what information originally submitted with the application for prequalification should be updated.]
- 12.1 Bid language.
[The same language in which the bidding documents are written. English, French, or Spanish should be used in International Competitive Bidding.]
- 13.2 Indicate whether this contract is being bid simultaneously with other contracts on a “slice and package” basis.
- 14.4 Indicate whether the contract is subject to price adjustment.
[Price adjustment is mandatory for contracts expected to last more than 18 months.]
- 15.1 Indicate whether the currency(ies) of the bid is (are) in accordance with Option A or Option B of Clause 15.

[Two alternative methods of pricing bids are acceptable for Works contracts:
 (A) *bidders quote entirely in the currency of the Employer’s country but specify the percentages of foreign currency or currencies (up to three) they require; or*

 (B) *bidders quote separately in local and foreign (up to three) currencies.*
Alternative (A) is the more frequently used arrangement. Alternatives A or B should be used in conjunction with, respectively, Alternatives A or B of Sub-Clause 30.1 of these Instructions and Clause 60 of the Conditions of Contract.]
- 15.2 Country of the Employer.
- 15.2 Currency of the Employer’s country.
- 16.1 Period of bid validity.
[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 Bank’s “No Objection”) and for

- notification of the award. Normally the validity period should not exceed 182 days.]
- 16.3** Percentage annual increase for foreign costs to adjust Bid Price.
Percentage annual increase for local costs.
[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 Employer's country for the period in question.]
- 17.1** Amount of bid security.
[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 1 percent of the estimated cost of the Works, for very large contracts of over US\$100 million, ranging to 3 percent of the estimated cost, for small contracts. Alternatively, if the Employer wishes to specify a percentage of the Bid Price, it should be indicated as a "minimum of _____ percent," to enable bidders to provide in excess of the minimum and thus conceal their prices.]
- 18.1** Bids are invited for alternative times for completion between _____ days minimum and _____ days maximum. The method of evaluation is indicated in Sub-Clause 31.2(e). The time for completion offered by the successful bidder shall be the contractual time for completion.

[This provision should be included, and appropriate time periods inserted, when Employers 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.]
- 19.1** Venue, time, and date of the pre-bid meeting.
[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).]
- 20.1** Number of copies of the bid to be completed and returned.
[Usually two; more if essential.]
- 21.2** Employer's address for the purpose of bid submission.
[Should match the receiving address provided in the Invitation for Bids.]
- 21.2** Number of the contract.
- 22.1** Deadline for submission of bids.
[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.]
- 25.1** Venue, time, and date of bid opening.
[Time and date should be the same as those given for the deadline for submission of bids (Clause 22).]
- 30.2** Currency chosen for the purpose of converting to a common currency.
[Specify either the local currency or a convertible currency, for example, U.S. dollars.]
- Source of exchange rate.
[If the common currency is other than the local currency, for example, U.S. dollars, indicate the name of an internationally circulated newspaper that lists daily currency exchange rates (e.g., Financial Times), which will be used for converting prices in foreign currencies. For prices in local currency and if the common currency selected above is the local currency, specify either the Central Bank or a commercial bank in the Purchaser's country.]

- Exchange rate date.
[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.]
- 31.2(e) Alternative times for completion will be evaluated as follows.
[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 Employer. The amount should be no more than the corresponding amount of liquidated damages, Appendix to Bid, Clause 47.1]
- 32.1 *[Select one Country) of following three alternative]*
- Domestic contractors may receive a margin of preference in bid evaluation**
or
Regional contracts may receive a margin of preference in bid evaluation
or
No margin of preference will be granted.
- 37 Standard form and amount of Performance Security acceptable to the Employer.
[Select the kind of Performance Security (bank guarantee and/or bond), and indicate the amount.
- A **bank guarantee** can be conditional or unconditional/on demand (see standard forms in Section 9). 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, to distinguish this type of security from the U.S.-style “performance bond”.*
- A **performance bond** 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 Employer, provided the Contractor accepts the default or a court or arbitration process so decides. An amount of 30 percent of the Contract Price is recommended for this type of security. See standard forms in Section 9.]*
- 38 Method for dispute resolution.
[Insert “Disputes Review Board,” “Disputes Review Expert,” or original FIDIC Clause 67.]
- Name(s) of member(s) of the Disputes Review Board or name of the Disputes Review Expert proposed by the Employer.
[The Employer should, in such case, include here the curriculum vitae of the proposed experts.]

Section IV. Part 1. General Conditions of Contract

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Notes on the Conditions of Contract

Notes on the Conditions of Contract

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Notes on the Conditions of Contract

The Conditions of Contract comprise two parts:

- (a) **Part 1: General Conditions of Contract** (Section IV of this document), and
- (b) **Part 2: Conditions of Particular Application** (Section V of this document).

Over the years, a number of “model” General Conditions of Contract have evolved. The one used in these Standard Bidding Documents was prepared by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or FIDIC), and is commonly known as the FIDIC Conditions of Contract. (The current version is the fourth edition, 1987, reprinted in 1992 with further amendments.)

The FIDIC 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 **the Bank**. 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 FIDIC Conditions of Contract, are included in Section V and, in the interest of the Employer, are recommended for use instead of the Particular Conditions published by FIDIC. Some of the clauses are mandatory for works partly financed by the ~~world~~ Bank and are so indicated.

The use of standard conditions of contract for all civil Works will ensure comprehensiveness of coverage, better balance of rights or obligations between Employer and Contractor, general acceptability of its provisions, and savings in time and cost for bid preparation and review, leading to more economic 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 FIDIC General Conditions of Contract.

The FIDIC Conditions of Contract are copyrighted and may not be copied, faxed, or reproduced.

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 FIDIC Conditions of Contract can be referred to in the bidding documents, and the bidders advised to obtain copies directly from FIDIC.

Where a copy of Part 1 of the FIDIC Conditions of Contract is not included in the bidding documents, a page consistent with the example which follows should be completed and incorporated.

Part 1: General Conditions of Contract

[name of Employer]

[name of contract]

CONDITIONS OF CONTRACT

PART 1: GENERAL CONDITIONS¹

The Conditions of Contract, Part 1: General Conditions, shall be those forming Part 1 of the “Conditions of Contract for Works of Civil Engineering Construction,” fourth edition 1987, reprinted in 1992 with further amendments, prepared by the *Fédération Internationale des Ingénieurs-Conseils* (FIDIC). These Conditions are subject to the variations and additions set out in Part 2 hereof entitled “Conditions of Particular Application.”

¹ Add the following text if the bidding documents, as issued, do not include a copy:

Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

Part 1: General Conditions of Contract

[name of Employer]

[name of contract]

CONDITIONS OF CONTRACT

PART 1: GENERAL CONDITIONS¹

The Conditions of Contract, Part 1: General Conditions, shall be those forming Part 1 of the “Conditions of Contract for Works of Civil Engineering Construction,” fourth edition 1987, reprinted in 1992 with further amendments, prepared by the *Fédération Internationale des Ingénieurs-Conseils* (FIDIC). These Conditions are subject to the variations and additions set out in Part 2 hereof entitled “Conditions of Particular Application.”

¹ Add the following text if the bidding documents, as issued, do not include a copy:

Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

Section V. Part 2: Conditions of Particular Application

Notes on the Conditions of Particular Application (COPA)

The following clauses are intended for use by the Employer in preparing the Conditions of Particular Application (Part 2). Use them instead of the Particular Conditions published by FIDIC. **They are not a complete standard set of Part 2 provisions;** country- or Project-specific provisions for Part 2 must also be prepared in each case. However, standard, country-specific Conditions of Particular Application should be developed.

The provisions of Part 2 complement the General Conditions of Contract (Part 1), specifying contractual requirements linked to the special circumstances of the country, the Employer, the Engineer, the sector, the overall project, and the contract Works. In preparing Part 2, check that you have done the following:

- (a) **Incorporated essential information to complete the provisions of Part 1** (without which Part 1 would be incomplete), e.g., in Sub-Clauses 1.1, paras. (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 1 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 1** as required or recommended by the Bank 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 2 should be thoroughly familiar with the provisions of Part 1 and with any specific requirements of the contract. Legal advice is recommended when amending provisions or drafting new ones. Note that the **Part 2 provisions take precedence over those in Part 1.**

Section V. Part 2: Conditions of Particular Application

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 Bank; and
- (F)** denotes clauses drawn verbatim from the FIDIC Conditions of Contract for Works, fourth edition, 1987, reprinted in 1992 with further amendments, Parts 1 and 2.
- (*)** An asterisk below the above notations indicates that **explanations for any differences** in text from the FIDIC Conditions are given in the Notes and Additional Clauses to Section IV at the end of this book.

Several clauses **must be incorporated** in Part 2 for contracts financed from Bank loans. They are marked **(M)** (for **“Mandatory”**) next to the indication of origin. Other clauses, without being mandatory, are normally incorporated in Part 2. They are marked **(R)** (for **“Recommended”**). Use of the remaining clauses is **“Optional”** **(O)** and are accordingly marked; where appropriate, those clauses may be incorporated in Part 2 or adapted to suit the specific circumstances of each contract. In sum,

- (M)** Mandatory
- (R)** Recommended
- (O)** Optional

Clause numbers in Part 2 correspond to those in Part 1, except for clauses with numbers higher than 72 for which there are no counterparts in Part 1.

Special consideration must be given to Part 2 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 which, for convenience, have not been reprinted here. If required, they can be drawn directly from Part 2 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 2: Conditions of Particular Application

A. Clauses 1-10

Sub-Clause 1.1 Definitions	(WB-M)	(a)	The “Bank” includes the African Development Bank, the African Development Fund and the Nigeria Trust Fund.
	(F-M)	(a) (i)	The Employer 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 Employer, and notified to the Contractor, to act in replacement of the Engineer.”
			Amend subpara. (b) (v) of Sub-Clause 1.1 by adding the following words at the end:
	(WB-R)		“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’.”
Sub-Clause 2.1 Engineer’s Duties and Authority ⁱ	(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 Employer before taking any of the following actions specified in Part I:
		(a)	consenting to the subletting of any part of the Works 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.

Section V. Part 2: Conditions of Particular Application⁴

(F-R) *In the absence of the above subpara. 2.1 (d)(i), if the obligation to obtain the approval of the Employer 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:*

“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 Employer, 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 Employer.”

Sub-Clause 4.3
Domestic or
regional Preference

(WB-R)

If the Contractor **which is awarded the contract through the application of a domestic or regional preference** consists of a joint venture, the Contractor shall not, without express approval of the Employer, modify the profit and loss distribution and work-sharing characteristics of the joint venture with which it satisfied the criteria of eligibility for being awarded the Contract with the application of the domestic **or regional** preference.

Sub-Clause 5.1
Language and Law

(F-M)

(a) The language is stipulated in the Appendix to Bid.

(F-M)

(b) The law is that in force in the country stipulated in the Appendix to Bid.

Sub-Clause 5.2
Priority of Contract
Documents

(WB-M)

(*)

Delete the documents listed 1-6 and substitute:

- (1) the Contract Agreement (if completed);
- (2) the Letter of Acceptance;
- (3) the Bid and the Appendix to Bid;
- (4) the Conditions of Contract, Part II;
- (5) the Conditions of Contract, Part I;
- (6) the Specifications;
- (7) the Drawings;
- (8) the priced Bill of Quantities; and
- (9) other documents, as listed in the Appendix to Bid.

Sub-Clause 10.1
Performance
Security

(WB-M)

(*)

Replace the text of Sub-Clause 10.1 with the following:

“The Contractor shall provide security for his proper performance of the

Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of a bank guarantee or performance bond, as stipulated by the Employer 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 Employer.

“If the performance security is a bank guarantee, it shall be issued either (a) by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) directly by a foreign bank which has been determined in advance to be acceptable to the Employer.

“If the performance security is a performance bond, it shall be issued by a bonding or insurance company acceptable to the Employer.

“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.”

Sub-Clause 10.2 Validity of the Performance 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.
Sub-Clause 10.3 Claims under Performance Security	(WB-R) (*)	<i>While not making this a mandatory requirement for contracts financed by it, the Bank strongly advises Employers to consider deleting Sub-Clause 10.3.</i>
Sub-Clause 10.4 Cost of Performance Security	(WB-M)	The cost of complying with the requirements of this clause shall be borne by the Contractor.

B. Clauses 11-20

Sub-Clause 11.2 Access to Data	(F-R) (*)	<i>Where the bulk or complexity of the data, for reasons of security enforced by the country where the Works are to be executed, make it</i>
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Section V. Part 2: Conditions of Particular Application⁴

impracticable for the Employer 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 Employer 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.”

- | | | |
|---|-------|--|
| Sub-Clause 14.1
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.” |
| Sub-Clause 14.3
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.” |
| Sub-Clause 15.2
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.” |
| Sub-Clause 16.3
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.” |
| Sub-Clause 16.4
Employment of Local Personnel | (F-O) | <i>Where the Employer wishes to encourage the Contractor to engage local staff and labor, the following Sub-Clause 16.4 may be inserted:</i>

“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 Employer stipulated in the Appendix to Bid.” ⁱⁱ |
| Sub-Clause 19.1
Safety, Security, and Protection of the Environment | | <i>Employers should note that the Loan Agreement between the Bank 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.</i> |

Sub-Clause 20.4
Employer's Risks(WB-M)
(*)

Amend Sub-Clause 20.4 to read as follows:

The Employer'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, or 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 Employer 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) which 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

Section V. Part 2: Conditions of Particular Application⁴

(B) insure against such loss or damage.

C. Clauses 21-30

Sub-Clause 21.1 Insurance of Works and Contractor's Equipment	(WB-M)	Add the following words at the end of subparas. (a) and immediately before the last word of subpara. (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 subpara. (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.
Sub-Clause 21.4 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 subparas. (a) (i) to (iv) of the Conditions of Particular Application."
Sub-Clause 25.1 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."
Sub-Clause 25.5 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 <u><i>ADB Rules for Procurement Loans and IDA Credits</i></u> , which have been determined to be acceptable to the Employer."
Clauses 21, 23, and 25	(F-O)	<i>Sample Sub-Clauses for a Contract where the Employer arranges for</i>

Insurances Arranged by Employer (*) *insurances are given in the Notes and Additional Clauses to Section 4 at the end of this book.*

D. Clauses 31-40

Clauses 34 and 35 (F-O) *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 4 at the end of this book.*
Labor (*)

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 Employer, as stipulated in the Appendix to Bid.”ⁱⁱⁱ

Section V. Part 2: Conditions of Particular Application

E. Clauses 41-50

- Sub-Clause 43.1** (F-O) *Where completion is stated to be by a date and not within a period, Sub-Clause 43.1 should be amended, as follows:*
- Time for Completion
- 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) *For a Contract located in an isolated area, where 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:*
- Restriction on Working Hours
- 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.”
- The Contractor’s option may be further extended by substituting in place of the last three words:*
- “holidays or days of rest.”
- Sub-Clause 47.3** (WB-O) *Where it is desired to make provision for the payment of a bonus for early completion of the whole Works or partial bonuses for completion of key sections of the Works,^{iv} 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 Employer 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.*
- Bonus for Early Completion (*)
- If the Contractor achieves completion of the Works or, if applicable, any Section thereof prior to the relevant time prescribed by Clause 43, the Employer 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 which 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
Prevention from
Testing

(F-O)

Where it can be foreseen that, when the whole of the Works have been substantially completed, the 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 Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer 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.

Sub-Clause 49.5
Extension of
Defects Liability

(WB-O)
(*)

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 Acceptance

F. Clauses 51-59

Section V. Part 2: Conditions of Particular Application

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

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) *Where provision is made in the Contract for payment in foreign*
Power of Engineer (*) *currency, Clause 52.1 may be varied, as follows:*
to Fix 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) *In addition, it is usually advisable to establish thresholds below which*
Power of Engineer *changes in rates or prices do not apply, by modifying Sub-Clause 52.2*
to Fix Rates *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 by more than 25 percent.”

Add a final sentence, as follows:

Sub-Clause 52.3	(WB-M)	
Variations	(*)	“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.
Exceeding 15		
Percent		
Clause 54	(WB-R)	<i>The Bank recommends not to use Sub-Clauses 54.2 and 54.5 of FIDIC Part II.</i>
Contractor’s	(*)	
Equipment,		
Temporary Works,		
and Materials		
Sub-Clause 55.2	(WB-M)	<i>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.</i>
Omissions of	(*)	
Quantities		
		Items of the Works described in the Bill of Quantities 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 Employer.
Clause 59	(WB-R)	<i>The Bank does not recommend the practice of the Employer supplying materials to the Contractor.</i>
Materials and Plant	(*)	
Supplied by the		
Employer		
		<i>The supply of Plant by the Employer should be treated as a nominated subcontract, pursuant to Clause 59.</i>

Section V. Part 2: Conditions of Particular Application

G. Clause 60

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.

Clause 60 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:
Sub-Clause 60.1 Monthly Statements	(WB-R)	<p>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:</p> <ul style="list-style-type: none">(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;(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;
- (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 which may have become due and payable by the Contractor to the Employer. 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 Employer and the Contractor an Interim Payment Certificate, certifying the amounts due to the Contractor.

(F-R)
(*)

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. 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.

Section V. Part 2: Conditions of Particular Application

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 Employer.

Sub-Clause 60.3 (WB-R)
Materials and Plant
for the Permanent
Works

With respect to materials and Plant brought by the Contractor to the Site^v 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 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 Sub-Clause (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 (WB-R) Payments to the Contractor by the Employer shall be made in the currencies in which the Contract Price is payable into a bank account or accounts nominated by the Contractor.
Place of Payment

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 Employer.
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 Employer 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 Acceptance, 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
Advance Payment

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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 Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer 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 (WB-R)
Time of Payment and Interest (*)

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 Employer to the Contractor within 42 days after the Contractor's monthly statement has been submitted to the Engineer for certification or, 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. In the event of the failure of the Employer to make payment within the times stated, the Employer 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 (F-R)
Correction of Certificates (*)

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which 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 Certificate in respect of the whole of the Works, the 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 which 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 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 which 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 which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer an Interim Payment Certificate for those parts of the draft final statement, if any, which 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.
- (*)
- Sub-Clause 60.12** (F-R) Upon submission of the Final Statement, the Contractor shall give to the

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Discharge	(*)	Employer, with a copy to the Engineer, a written discharge confirming 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.
Sub-Clause 60.13 Final Payment Certificate	(F-R) (*)	<p>Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall deliver to the Employer (with a copy to the Contractor) a Final Payment Certificate stating</p> <ul style="list-style-type: none">(a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and(b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than under Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.
Sub-Clause 60.14 Cessation of Employer's Liability	(F-R) (*)	The Employer 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

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

Clause 60 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:
Sub-Clause 60.1 Monthly Statements	(WB-R)	The Contractor shall submit a statement in the number of 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;
- (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,

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to which the Contractor may be entitled under the Contract or otherwise.

Sub-Clauses 60.2 to 60.4	(WB-R)	<i>[Use Sub-Clauses 60.2 to 60.4 of Alternative A.]</i>
Sub-Clause 60.5 Retention Money	(WB-R)	<i>[Use Sub-Clause 60.5 of Alternative A, substituting “Sub-Clause 60.1(h)” for “Sub-Clause 60.1(i).]</i>
Sub-Clauses 60.6 to 60.14	(WB-R)	<i>[Use Sub-Clauses 60.6 to 60.14 of Alternative A.]</i>

H. Clauses 61-70

Sub-Clause 63.1 Default of Contractor ^{vi}	(WB-R) (*)	Delete the last paragraph of this sub-clause and substitute: “then the Employer may, after giving 14 days’ notice to the Contractor, enter upon the Site and expel the Contractor therefrom 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 Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer 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 Employer 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 towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.”
Sub-Clause 63.2 Valuation at Date of Expulsion	(WB-R)	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”.
Sub-Clause 63.3 Payment after Expulsion	(WB-R)	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”.
Sub-Clause 63.4 Assignment of Benefit of Agreement	(WB-R)	In Sub-Clause 63.4, delete the word “termination” on the second line, and substitute “expulsion”.

Sub-Clause 65.2 Special Risks	(WB-M) (*)	Amend Sub-Clause 65.2 to read as follows: “The Special Risks are the risks defined under para. (a), subparas. (i) to (v) of Sub-Clause 20.4.”
Clause 67 Settlement of Disputes		<p>These Standard Bidding Documents include three versions of Clause 67, Settlement of Disputes, which are included in Section 13 of this volume. The Employer should select which version to use in accordance with the following:</p> <p>(a) Version 1 provides for disputes between the parties to be referred to a Disputes Review Board consisting of three members.</p> <p>(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.</p> <p>(c) The third option remains Clause 67 as included in the FIDIC General Conditions in which the Engineer acts as arbiter of first instance in the disputes which may arise between the parties, provided that for the World Bank to accept its use, the Engineer must be independent from the Employer.</p> <p>Version 1 is mandatory for contracts estimated to cost more than US\$50 million. Contracts smaller than US\$10 million should generally follow the <i>Standard Bidding Documents, Procurement of Works, Smaller Contracts</i>. For contracts between US\$10 million and US\$50 million, Employers may select any of the three versions of Clause 67, depending on their regulatory framework and preferences.</p>
Sub-Clause 67.1 Engineer’s Decision	(WB-M)	The procedure for settlement of disputes is the one stipulated in the Appendix to Bid. If the Employer selects either Version 1 or Version 2, then the relevant clauses from Section 13 of this SBDW shall be incorporated in and be part of these Conditions of Particular Application.
Sub-Clause 68.2 Notice to Employer and Engineer	(F-M)	For the purposes of this Sub-Clause, the addresses are those specified in the Appendix to Bid.
Clause 69 Default of Employer	(WB-R)	In Sub-Clauses 69.1, 69.4, and 69.5, substitute “Sub-Clause 60.8” for “Sub-Clause 60.10”.
Sub-Clause 69.1 (d) Economic Dislocation	(WB-R)	Sub-Clause 69.1 (d) is deleted.

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Sub-Clause 69.3 Payment on Termination	(WB-R)	Delete from ", but in addition to the payments specified..." to the end of the sub-clause.
Sub-Clause 69.4 Contractor's Entitlement to Suspend Work	(WB-R)	Add this paragraph: 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 suspend work or reduce the rate of work within 56 days after notification by the Bank to the Employer's government that the Bank has suspended disbursements from its loan, which finances in whole or in part the execution of the Works.
Sub-Clause 69.6 Suspension of <u>African</u> <u>Development</u> <u>Bank Loan</u>	(WB-R)	In the event the Bank suspends the loan or credit to the Employer from which part of the payments to the Contractor are being made: (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the suspension notice from the World Bank. (b) If the Contractor has not received sums due to him upon the expiration of the 42 days for payment provided for in Sub-Clause 60.8, the Contractor may immediately issue a 14-day termination notice.
Clause 70 Changes in Cost and Legislation	(WB-R) (*)	<i>In Works contracts financed in whole or in part by the Bank, 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 only be applied 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.</i> Delete Clause 70 in its entirety, and substitute:
Sub-Clause 70.1 Price Adjustment	(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.

Sub-Clause 70.2
Other Changes in
Cost

(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.

Sub-Clause 70.3
Adjustment
Formulae

(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^{vii} and each of the types of construction work to be performed and Plant to be supplied.^{viii} The formulae will be of the following general type

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 Sub-Clause 60.1 (d), and with Sub-Clauses 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;^{ix}

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;

Ln, Mn, En, etc., are the current cost indices or reference prices of the cost elements in the specific currency 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/Z** 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 **Z** is the corresponding number of such currency units on the date of the current index.^x

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|--|---------------|---|
| Sub-Clause 70.4
Sources of Indices
and Weightings | (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. |
| Sub-Clause 70.5
Base, Current and
Provisional Indices | (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 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
Adjustment after
Completion | (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 Employer, 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. |
| Sub-Clause 70.7
Weightings | (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. |
| Sub-Clause 70.8
Subsequent
Legislation | (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 which 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 Employer 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 Employer. 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.

I. Clauses 71-80

Sub-Clause 72.2 Currency Proportions Alternative A: To be used with Clause 60, Alternative A.	(WB-M)	Delete the words from “prevailing, as determined by the Central Bank...” to the end of the Sub-Clause and substitute with “stated by the Contractor in the Appendix to Bid, included with its original Bid.”
Sub-Clause 72.2 Currency Proportions Alternative B: To be used with Clause 60, Alternative B.	(WB-M)	Delete entirely.
Sub-Clause 72.4 Substantial Changes in Currency Requirements	(WB-M)	<p>The foreign and local currency portions of the balance of the Contract Price shall be amended by agreement between the Employer 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> <ul style="list-style-type: none"> (a) the Contractor shall inform the Employer and the Engineer whenever any such substantial change may occur; or (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 which should result in any substantial change of such expected requirements.
Sub-Clause 73.1 Foreign Taxation	(WB-M) (*)	The prices bid by the Contractor shall include all taxes, duties, and other charges imposed outside the Employer’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.
Sub-Clause 73.2	(WB-M)	The prices bid by the Contractor shall include all customs duties, import

Section V. Part 2: Conditions of Particular Application

Local Taxation	(*)	duties, business taxes, and income and other 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 Employer'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 Employer's country on profits made by him in respect of the Contract.
Sub-Clause 73.3 Income Taxes on Staff	(WB-R) (*)	The Contractor's staff and labor will be liable to pay personal income taxes in the Employer'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.
Sub-Clause 73.4 Duties on Contractor's Equipment ^{xi}	(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 which 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 Employer'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 Employer 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 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 Employer'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 74.1** (WB-R) If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any payment, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favor or disfavor to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and expel the Contractor and the provisions of Clause 63 hereof shall apply as if such entry and expulsion had been made pursuant to that clause.
- Sub-Clause 75.1** (WB-O) Termination of Contract for Employer's Convenience
- The Employer shall be entitled to terminate this Contract at any time for the Employer'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 Employer as provided in Sub-Clause 65.8.
- Sub-Clause 76.1** (WB-M) Restrictions on Eligibility
- (a) Any Plant, materials, or services which 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 Bank's ***Rules for Procurement***, as defined in section 14 of the bidding documents, "***Eligibility for the Provisions of Goods, Works, and Services in Bank Financed Procurement.***"
- (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) Joint and Several Liability
- If the Contractor is a joint venture of two or more persons, all such persons shall be joint and severally bound to the Employer for the fulfillment of the terms of the Contract and shall designate one of such persons to act as a leader 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 Employer.
- Sub-Clause 78.1** (F-R) Details to Be Confidential
- 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 Employer 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

Section V. Part 2: Conditions of Particular Application

to the Employer whose determination shall be final.

Section VI. Technical Specifications

Notes for Preparing Technical Specifications

Precise and clear Specifications are a prerequisite for bidders to respond realistically and competitively to the requirements of the Employer 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 the Bank. Most Specifications are normally written specially by the Employer or Engineer to suit the contract Works in hand. There are no standard Specifications for universal application in all sectors in all countries, but there are established principles and practices which 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 Borrower'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 than 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

Where:

Section VI. Technical Specifications

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 Sub-Clause 60.1 (d) and with Sub-Clauses 60.1 (e)

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 which ensure a substantially equal or higher performance than 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

Employers 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 Employer should provide a description of the selected parts of the Works with appropriate references to Drawings, Specifications, Bill of Quantities, 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 Employer, 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 Employer each on its own merits and independently of whether the bidder has priced the item as described in the Employer'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 Bank Standard Bidding Documents.

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

Where:

Section VI. Technical Specifications

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 Sub-Clause 60.1 (d) and with Sub-Clauses 60.1 (e)

Section VII. Form of Bid, Appendix to Bid, and Bid Security
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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 which follow.

Note: All details marked with an asterisk (*) shall be inserted by the Employer before issue of the bidding documents.

Appendix to Bid Appendix to Bid Appendix to Bid Appendix to Bid Appendix to Bid

The Employer 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 which 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.

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 “Bank” and/or “World Bank” includes the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).
	*1.1 (a)(i)	The Employer is _____ [insert name]
	*1.1 (a)(iv)	The Engineer is _____ [insert name]
Engineer’s Authority to Issue Variations	*2.1 (d)(ii)	_____ percent of the Contract Price.
	*5.1 (a)	The language is _____ [insert language] ^{xii}
	*5.1 (b)	The law in force is that of _____ [insert name of country]
Performance Security	*10.1	The performance security will be in the form of a [insert either one of “conditional” or “unconditional” “bank guarantee” or “performance bond”] in the amount(s) of _____ [insert related figure(s)] percent of the Contract Price.
Inspection of Site	*11.2	Data made available by the Employer under Sub-Clause 11.1 is open for inspection at _____ _____ [insert address]
Program to Be Submitted	*14.1	_____ days. ^{xiii}

Section VII. Form of Bid, Appendix to Bid, and Bid Security⁷

Cash Flow Estimate	*14.3	_____ days. ^{xiv}
Country of the Employer	*16.4	The country of the Employer is _____ [insert country]
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 ^{xv}	*43.1	_____ days ^{xvi} [or insert date]
Amount of Liquidated Damages ^{xvii}	*47.1	_____ per day
Limit of Liquidated Damages	*47.1	_____ percent of the final Contract Price
Amount of Bonus for Early Completion ^{xviii}	*47.3	_____ per day
Limit of Bonus ^{xix}	*47.3	_____ percent of Contract Prize
Taking Over of Sections	*48.2(a)	[if applicable, listed under Sub-Clause 43.1]
Defects Liability Period	*49.1	_____ days
	*49.5	_____ years [if applicable]
Minimum Amount of Interim Payment Certificates	*60.2	_____ amount
Retention Money ^{xx}	*60.5	_____ percent of Interim Payment Certificates
Maximum Amount of Advance Payment ^{xxi}	*60.7	_____ percent of the Contract Price
Start Repayment of Advance Payment ^{xxii}	*60.7	After certification of _____ percent of the Contract Price
Monthly Recovery of Advance Payment ^{xxiii}	*60.7	_____ percent ^{xxiv} of the amount of monthly Interim Payment Certificates
Number of Copies of Statement of Completion and Final	*60.1 60.10 60.11	_____ number

Statement

Procedure for
Settlement of Disputes

*67

The procedure for Settlement of Disputes is:

[insert "Version 1," "Version 2," or "Clause 67 of FIDIC General Conditions"].

*67.1

The appointing authority shall be:

[delete when the original FIDIC Clause 67 is retained].

Notice to Employer and
Engineer

*68.2

The Employer's address is:

[insert name and address]

The Engineer's address is:

[insert name and address]

Section VII. Form of Bid, Appendix to Bid, and Bid Security

**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: For use with Alternatives A of Clause 60 and Sub-Clause 72.2

60.1
72.2

[see **Table: Alternative A** immediately below]

Table: Alternative A

Summary of currencies of the Bid for [insert name of section of the Works]⁶

<i>Name of currency</i>	<i>A</i> <i>Amount of</i> <i>currency</i>	<i>B</i> <i>Rate of exchange</i> <i>(local currency per</i> <i>unit of foreign)</i>	<i>C</i> <i>Local currency</i> <i>equivalent</i> <i>C = A x B</i>	<i>D</i> <i>Percentage of Bid Price</i> <i>$\frac{100 \times C}{(Bid Price)}$</i>
Local currency		1.00		
Foreign currency #1				
Foreign currency #2				
Foreign currency #3				
Provisional sums expressed in local currency ¹	123,456	—	123,456	
Total			<u>123,456</u> Bid Price	100.00

¹To be entered by Employer.

⁶ 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 Employer should insert the names of each section of the Works.

Section VII. Form of Bid, Appendix to Bid, and Bid Security

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

Table: Alternative B

Summary of currencies of the Bid for *[insert name of section of the Works]*⁷

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

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

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-Bank On-Lending Rate (libor) plus 2 percent¹</i>
_____	_____
_____	_____
_____	_____
etc.	etc.

¹The 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.

⁷ *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 Employer should insert the names of each section of the Works.*

Approximate Weightings for Price Adjustment Formulae^{xxv} *70.3 [See table immediately below.]

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

Weightings and Indices^{xxvi} 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.

Section VII. Form of Bid, Appendix to Bid, and Bid Security

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: .¹

<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 FCI</i>	<i>Bidder's proposed weighting</i>
	Nonadjustable	—	—	—		A: _____*
						B: _____
						C: _____
						D: _____
						E: _____
			Total			1.00

¹If 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 Subcontractors¹

<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>
-------------	------------------------	--------------------------	--	--

¹The Bidder shall enter in this schedule a list of the major sections and appropriate value of the work for which he proposes to use subcontractors, together with the names and addresses of the proposed subcontractors.

Section VII. Form of Bid, Appendix to Bid, and Bid Security

Form of Bid Security (Bank Guarantee)¹Form of Bid Security (Bank Guarantee)¹Form of Bid Security (Bank Guarantee)¹Form of Bid Security (Bank Guarantee)¹Form of Bid Security (Bank Guarantee)¹

WHEREAS, [name of Bidder] (hereinafter called "the Bidder") has submitted his Bid dated [date] for the execution of [name of Contract] (hereinafter called "the Bid").

KNOW ALL PEOPLE by these presents that We [name of Bank] of [name of country] having our registered office at [address] (hereinafter called "the Bank") are bound unto [name of Employer] (hereinafter called "the Employer") in the sum of [amount]⁹ for which payment well and truly to be made to the said Employer the Bank binds himself, his successors, and assigns by these presents.

SEALED with the Common Seal of the said Bank this _____ day of _____ 19_____.

THE CONDITIONS of this obligation are:

- (1) if the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) if the Bidder refuses to accept the correction of errors in his Bid; or
- (3) if the Bidder, having been notified of the acceptance of his Bid by the Employer 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 Instruction to Bidders;

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

⁸ The Bidder shall complete either this form of Bank Guarantee or may provide another security acceptable to the Employer.

⁹ The Bidder should insert the amount of the guarantee in words and figures denominated in the currency of the Employer's country or an equivalent amount in a freely convertible currency. This figure should be the same as shown in Clause 17.1 of the Bidding Data. The attention of joint venture bidders is drawn to Clause 17.3 of the Instructions to Bidders.

This Guarantee will remain in force up to and including the date 28 days after the date of expiration of the Bid Validity, as stated in the Instructions to Bidders, or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE _____ SIGNATURE OF THE BANK _____

WITNESS _____ SEAL _____

[signature, name, and address]

Section VIII. Bill of Quantities

Notes for Preparing a Bill of Quantities

Objectives

The objectives of the Bill of Quantities 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 for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities 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 should be as simple and brief as possible.

Content

The Bill of Quantities 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 which have been adopted in the preparation of the Bill of Quantities and which 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 should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or 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. When a family of Price Adjustment Formulae are used, they should relate to appropriate sections in the Bill of Quantities.

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 Employer).

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

Ground and Excavation Levels

Section VIII. Bill of Quantities

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, is relatively high. To facilitate checking by the Employer 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 Constructional Place 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, 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. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. 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 as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the Employer 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 following by an item in the Bill of Quantities 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 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 are intended only as information for the Employer or the person drafting the bidding documents. They should **not** be included in the final documents.*

Section VIII. Bill of Quantities

Sample

Bill of Quantities

A. Preamble

1. The Bill of Quantities 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 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, 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 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, 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.
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, 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. References to the relevant sections of the contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.
7. Provisional Sums included and so designated in the Bill of Quantities 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]*.¹⁰
9. Errors will be corrected by the Employer 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

¹⁰ 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.

- (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 Employer, 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 which, 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 which cannot be extracted by ripping with a tractor of at least 150 brake hp with a single, rear-mounted, heavy-duty ripper.

Section VIII. Bill of Quantities⁹

Sample

Bill of Quantities

B. Work Items

1. The Bill of Quantities 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.

2. Bidders shall price the Bill of Quantities in local currency only, and shall indicate in the Appendix to Bid the percentage expected for payment in foreign currency or currencies.¹¹

¹¹ 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 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 Constructional Plant	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.)

Section VIII. Bill of Quantities⁹

Sample

Bill of Quantities

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 ³	95,000		
202	Excavate topsoil to maximum depth 25-50 cm, and dispose	m ³	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 ³	258,000		
207	Excavate rock in cuttings and dispose, any depth	m ³	25,000		
208	—etc.—				
				Total for Bill No. 2	_____
				(carried forward to Summary, p.)	

Sample**Bill of Quantities****Bill No. 3: Culverts and Bridges**

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
301	Excavate in all materials other than rock from ground level to underside of foundations, maximum depth 5 m, and dispose	m ³	18,500		
302	Excavate in all materials other than rock, depth 5 m to 7.5 m	m ³	2,500		
303	Provisional Item As Item 302, depth 7.5 m to 10 m	m ³	500		
304	—etc.—				
311	Concrete class B in abutments	m ³	18,500		
312	—etc.—				
318	Mild steel reinforcement in abutments and piers up to 20 mm diameter	t	370		
319	—etc.—				
				Total for Bill No. 3	_____
				(carried forward to Summary, p.)	

Section VIII. Bill of Quantities⁹

Sample

Bill of Quantities

C. Daywork Schedule¹²

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 dayworks, 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.,¹³ 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, overtime, subsistence allowances, and any

¹² (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-Clause 52.1 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.

¹³ 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.

sums paid to or on behalf of such labor for social benefits in accordance with [country of Borrower] 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).¹⁴
 - (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);¹⁵
 - (ii) local: _ percent (to be stated by the Bidder);¹⁶
- (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.

¹⁴ The Bidder shall state the percentage in a common foreign currency equivalent required for payment, and the exchange rates and official sources used.

¹⁵ The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

¹⁶ The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

Section VIII. Bill of Quantities

Daywork Constructional Plant

5. The Contractor shall be entitled to payments in respect of Constructional Plant already on Site and employed on daywork at the basic rental rates entered by him in the **Schedule of Daywork Rates: 3. Constructional 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.¹⁷ The cost of drivers, operators, and assistants will be paid for separately as described under the section on Daywork Labor.¹⁸

6. In calculating the payment due to the Contractor for Constructional Plant 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 Constructional Plant 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 Constructional Plant 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).¹⁹
- (b) local: _____ percent (to be stated by the Bidder).²⁰

¹⁷ 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.

¹⁸ An alternative, sometimes adopted for administrative convenience, is to include the cost of drivers, operators, and assistants in the basic rates for Constructional Plant. The last sentence of paragraph 5 should then be modified accordingly.

¹⁹ The Bidder shall state the percentage in a single foreign currency equivalent, and the exchange rates and official sources used.

²⁰ The Bidder shall state the percentage in a single foreign currency equivalent, and the exchange rates and official sources used.

Sample**Bill of Quantities****Schedule of Daywork Rates: 1. Labor**

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
D100	Ganger	hour	500		
D101	Laborer	hour	5,000		
D102	Bricklayer	hour	500		
D103	Mason	hour	500		
D104	Carpenter	hour	500		
D105	Steelworker Erector	hour	500		
D106	—etc.—	hour			
D113	Driver for vehicle up to 10 tons	hour	1,000		
D114	Operator for excavator, dragline, shovel or crane	hour	500		
D115	Operator for tractor with dozer blade or ripper	hour	500		
D116	—etc.—	hour			
					Subtotal
D122	Allow _____ percent ¹ of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3(b) above.				

Total for Daywork: Labor _____
(carried forward to Daywork Summary, p.)

¹ To be entered by the Bidder.

Section VIII. Bill of Quantities

Sample

Bill of Quantities

Schedule of Daywork Rates: 2. Materials

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
D201	Cement, ordinary Portland, or equivalent in bags	t	200		
D202	Mild steel reinforcing bar up to 16 mm diameter to BS 4449 or equivalent	t	100		
D203	Fine aggregate for concrete as specified in Clause	m ³	1,000		
D204	—etc.—				
D222	Gelignite (Nobel Special Gelatine 60%, or equivalent) including caps, fuse, wire, and requisite accessories	t	10		
				Subtotal	
D122	Allow ____ percent ¹ of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3(b) above.				
				Total for Daywork: Materials	_____
				(carried forward to Daywork Summary, p.)	

¹ To be entered by the Bidder.

Sample

Bill of Quantities

Schedule of Daywork Rates: 3. Constructional Plant

<i>Item no.</i>	<i>Description</i>	<i>Nominal Quantity (hours)</i>	<i>Basic hourly rental rate</i>	<i>Extended amount</i>
D301	Excavator, face shovel, or dragline:			
.1	Up to and including 1 m ³	500		
.2	Over 1 m ³ to 2 m ³	400		
.3	Over 2 m ³	100		
D302	Tractor, including bull or angle dozer:			
.1	Up to and including 150 kW	500		
.2	Over 150 kW to 200 kW	400		
.3	Over 200 kW to 250 kW	200		
D303	Tractor with ripper:			
.1	Up to and including 200 kW	400		
.2	Over 200 kW to 250 kW	200		
D304	—etc.—			

Total for Daywork: Constructional Plant _____
(carried forward to Daywork Summary, p.)

Section VIII. Bill of Quantities

Sample

Bill of Quantities

Daywork Summary

	<i>Amount</i> ¹	<i>% Foreign</i>
	()	
1. Total for Daywork: Labor		
2. Total for Daywork: Materials		
3. Total for Daywork: Constructional Plant		
Total for Daywork (provisional sum)		
(carried forward to Bid Summary, p.)		

¹ The Employer should insert local currency unit.

Sample**Bill of Quantities****Summary of Specified Provisional Sums**

<i>Bill no.</i>	<i>Item no.</i>	<i>Description)</i>	<i>Extended 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
et			
c.			
Total for Specified Provisional Sums (carried forward to Grand Summary (B), p.)			4,750,000

Section VIII. Bill of Quantities

Sample

Bill of Quantities

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.—			
Subtotal of Bills		(A)	
Specified Provisional Sums included in subtotal of bills		(B)	4,750,000
Total of Bills less Specified Provisional Sums (A - B)		(C)	
Add Provisional Sum ¹ for Contingency Allowance		(D)	[sum] ²
Bid Price (A + D)		(E)	
Carried forward to Form of Bid			

¹ 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.

² To be entered by the Employer.

Section IX. Form of Agreement, Forms of Performance Security, and Bank Guarantee for Advance Payment

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Payment

Form of Agreement Form of Agreement Form of Agreement Form of Agreement Form of Agreement

AGREEMENT

THIS AGREEMENT made the _____ day of _____ 19 _____
between _____ of _____
(hereinafter called "the Employer") of the one part and _____
of _____ (hereinafter called "the Contractor") of the other part.

WHEREAS the Employer 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, viz.:
 - (a) the Letter of Acceptance;
 - (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; and
 - (h) other documents, as listed in the Appendix to Bid
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer 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.

**Section IX. Form of Agreement, Forms of Performance Security,
and Bank Guarantee for Advance Payment**

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 Employer _____

Binding Signature of Contractor _____

**Forms of Performance Security and Bank Guarantee for Advance
PaymentForms of Performance Security and Bank Guarantee for Advance
PaymentForms of Performance Security and Bank Guarantee for Advance
PaymentForms 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 Employer.

Annex A Form: ²¹	Alternative 1	Performance Bank Guarantee (Unconditional)
	Alternative 2	Performance Bank Guarantee (Conditional)
	Alternative 3	Performance Bond
Annex C Form: ²²		Bank Guarantee for Advance Payment

²¹ The Employer should select one or more of the alternatives indicated, and include it (them) in the bidding documents prior to issue.

²² The Employer should omit Annex C if no Advance Payment is to be provided.

Section IX. Form of Agreement, Forms of Performance Security, and Bank Guarantee for Advance Payment

Annex A Form: Alternative 1

Performance Bank Guarantee (Unconditional)²³

To: *[name and address of Employer]*

WHEREAS *[name and address of Employer]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. ____ dated __ to execute *[name of Contract and brief description of Works]* (hereinafter called “the Contract.”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee]*, *[amount in words]*,²⁴ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

²³ The unconditional (or “on-demand”) bank guarantee has the merit of simplicity and of being universally known and accepted by commercial banks. The contracting community, however, strongly objects to this type of security because the guarantee can be called (or threatened to be called) by Employers without justification. Employers should recognize the contractual conditions governing nonperformance by the Contractor and should normally act only on the advice of the Engineer in calling a performance guarantee. Any unjustified calling of a bank guarantee, or unreasonable pressure exercised by an Employer, would be regarded by IBRD as contrary to the spirit and basic principles of international procurement. This type of guarantee is called a “bond” in a number of countries; however, it should be distinguished from the U.S.-style “performance bond” as shown in Alternative 3.

²⁴ 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 Employer.

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

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank: _____
Address: _____
Date: _____

Section IX. Form of Agreement, Forms of Performance Security, and Bank Guarantee for Advance Payment

Annex A Form: Alternative 2

Performance Bank Guarantee (Conditional)²⁵

THIS AGREEMENT is made on the _____ day of _____ 19 _____
between *[name of bank]* of *[address of bank]* (hereinafter called “the Guarantor”) of the one part and *[name of Employer]* of *[address of Employer]* (hereinafter called “the Employer”) 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 Employer 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 Employer 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 Employer the sum of *[amount of Guarantee]*, *[amount in words]*,²⁶ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the Employer or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor before the issue of the Defects Liability Certificate.

²⁵ The triggering of this form of performance guarantee is conditional (see subclause (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 Employer 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 Employers are prepared to accept this form of performance security.

²⁶ 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 Employer.

- (b) The Guarantor shall not be discharged or released from his guarantee by an arrangement between the Contractor and the Employer, with or without the 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 Employer in the presence of:

(Witness)

Section IX. Form of Agreement, Forms of Performance Security, and Bank Guarantee for Advance Payment

Annex A Form: Alternative 3

Performance Bond²⁷

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 Employer*] as Obligee (hereinafter called “the Employer”) in the amount of [*amount of Bond*], [*amount in words*],²⁸ 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 Employer dated the _____ day of __, 19 _____, 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 Employer to be, in default under the Contract, the Employer having performed the Employer’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 Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer 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 total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or

²⁷ This form of bond corresponds to the U.S. practice, and should not be interpreted in the context of a “bond,” as known in other countries. As with the conditional bank guarantee, the wording of some bonds may be such that an award under arbitration proceedings is needed to trigger action by the Surety.

²⁸ 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 Employer.

- (3) pay the Employer the amount required by Employer 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 Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

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 __ 19 __.

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 _____

Section IX. Form of Agreement, Forms of Performance Security, and Bank Guarantee for Advance Payment

Annex B Form

Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

[name of Contract]

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Subclause 60.7 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with *[name of Employer]* a bank guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee]*, *[amount in words]*.²⁹

We, the *[bank or financial institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of Guarantee]*, *[amount in words]*, such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between *[name of Employer]* and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

²⁹ An amount is to be inserted by the bank or financial institution 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 Employer.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until *[name of Employer]* receives full repayment of the same amount from the Contractor.

Yours truly,

SIGNATURE AND SEAL:

Name of Bank or Financial Institution: _____
Address: _____
Date: _____

Section X. DrawingsSection X. DrawingsSection X. DrawingsSection X. DrawingsSection X. Drawings

Notes for Preparing the DrawingsNotes for Preparing the DrawingsNotes for Preparing the DrawingsNotes for Preparing the DrawingsNotes for Preparing the Drawings

These Notes for Preparing the Drawings are intended only as information for the Employer 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.

Section XI. Explanatory Notes Section XI. Explanatory Notes Section XI. Explanatory Notes Section XI. Explanatory Notes

Notes and Additional Clauses to Section 4 Notes and Additional Clauses to Section 4 Notes and Additional Clauses to Section 4 Notes and Additional Clauses to Section 4 (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 IBRD 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. IBRD 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 IBRD requirements. Also, while IBRD 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 employers 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 Employer.
- Sub-Clause 10.2** This provision reduces the Performance Security to one half after issue of the Taking-Over Certificate.
- 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 Employer to demand payment under an unconditional performance security. Employers 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 which 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 which 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 Employer in a manner unacceptable to IBRD.

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 IBRD 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 by IBRD in order to specify, in accordance with *IBRD 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
Employer

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 Employer 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 Employer.

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

Clause 21 (F-O) Delete the text of the Clause and substitute the following re-numbered sub-clauses:

Sub-Clause 21.1 (F-O) Without limiting his or the Contractor’s obligations under Clause 20, the Employer will insure:

(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

Section XI. Explanatory Notes

		(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.
	(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. ^{xxvii}
Sub-Clause 21.2 Insurance of Contractor's 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.
Sub-Clause 21.3 Scope of Cover	(F-O) (WB-M)		The insurance in Sub-Clause 21.1 shall be in the joint ^{xxviii} names of the Contractor and the Employer and shall cover
		(a)	the Employer 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
		(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 Responsibility for Amounts not Recovered	(F-O)		Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause 20.
(Clause 22 is not modified)			
Clause 23	(F-O)		Delete the text of the Clause and replace with the following:
Sub-Clause 23.1 Third Party Insurance (including	(F-O)		Without limiting his or the Contractor's obligations and responsibilities under Clause 22, the Employer will insure in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as provided for in Clause 24) or loss of or damage

Employer's property)		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.
Clause 25	(F-O)	Delete the text of the Clause and replace with the following:
Sub-Clause 25.1 Evidence and Terms of Insurances	(F-O) (WB-R)	The insurance policies to be arranged by the Employer 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 Employer to the Contractor. The Employer shall provide evidence to the Contractor prior to the start of work at the Site that insurances required under the Contract have been effected. ^{xxix}
Sub-Clause 25.2 Adequacy of Insurances	(F-O)	The Employer 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 premiums. No variations shall be made to the insurances by the Employer without the prior approval of the Contractor.
Sub-Clause 25.3 Remedy on Employer's Failure to Insure	(F-O)	If and so far as the Employer 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 Employer.
Sub-Clause 25.4 Compliance with Policy Conditions	(F-O)	In the event that the Contractor or the Employer 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 Labor		<i>It will generally be necessary to add a number of sub-clauses 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 Employer 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.</i>
Clause 34		<i>Sample sub-clauses follow, to be numbered as appropriate:</i>

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- Sub-Clause 34** (F-O) The Contractor shall pay rates of wages and observe 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 which are not less favorable than the general level of wages and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- Rates of Wages
and Conditions of
Labor
- Sub-Clause 34** (F-O) The Contractor shall not recruit or attempt to recruit his staff and labor from among persons in the service of the Employer or the Engineer.
- Employment of
Persons in the
Service of Others
- Sub-Clause 34** (F-O) The Contractor shall be responsible for the return to the 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 *[insert name of country]* shall have left *[insert name of country]*.
- Repatriation of
Labor
- Sub-Clause 34** (F-O) 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 Employer, 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.
- Housing for Labor
- Sub-Clause 34** (F-O) 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.
- Accident
Prevention Officer;
Accidents
- Sub-Clause 34** (F-O) 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
- Health and Safety

hygiene requirements.

- | | | |
|---|-------|---|
| Sub-Clause 34
Measures against
Insect and Pest
Nuisance | (F-O) | 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
Epidemics | (F-O) | 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. |
| Sub-Clause 34
Burial of the Dead | (F-O) | 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]. <i>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.</i> |
| Sub-Clause 34
Supply of
Foodstuffs | (F-O) | 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. |
| Sub-Clause 34
Supply of Water | (F-O) | 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. |
| Sub-Clause 34
Alcoholic Liquor
or Drugs | (F-O) | 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. |
| Sub-Clause 34
Arms and
Ammunition | (F-O) | 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. |
| Sub-Clause 34
Festivals and
Religious Customs | (F-O) | The Contractor shall, in all dealings with his staff and labor, have due regard to all recognized festivals, days of rest, and religious and other customs. |

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- Sub-Clause 34**
Disorderly
Conduct (F-O) 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.
- Clause 35** Additional sub-clauses may be desirable to cover circumstances which require the maintenance of particular records or the provision of certain specific reports.

Sample sub-clauses—to be numbered, as appropriate:
- Sub-Clause 35**
Records of Safety
and Health (F-O) 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.
- Sub-Clause 35**
Reporting of
Accidents (F-O) 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.
- Sub-Clause 47.3** 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.
- Sub-Clause 49.5** The text remains the same as in FIDIC, but the periods have been left blank to afford the Employer an opportunity to insert times appropriate to the circumstances of each project.
- Sub-Clauses 52.1,
52.2, and 52.3** The purpose of the additional provisions mandated by IBRD 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 IBRD-financed contracts, because they risk creating complex legal issues without adding much real protection for the Employer. 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 Employer.

Clause 59
Materials Supplied
by the Employer

IBRD recommends against the Employer's supplying materials directly to the Contractor. The issues that may arise from the Employer'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 Employer'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 Borrower insists on supplying certain construction materials, IBRD 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 IBRD 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.

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.

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- Sub-Clause 60.8** The modified text (a) refers the time of payment to the submission of the monthly statement by the Contractor, and (b) 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 Employer'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.
- Employers 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 Alternative Disputes Resolution procedure follows Clause 2.42 of the 1995 *IBRD 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): IBRD feels that, if required by public interest, the Employer 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 Employer. It therefore does not accept Sub-Clause 69.1 (d) and, instead, requires the addition of a Sub-Clause 75.1, “Termination of Contract for Employer'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, Employers should refer to FIDIC Part II, Sub-

- Sub-Clause 72.4** Clause 70.1, **Second Alternative**.
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 Employer may wish to share in these benefits.
- Clauses 73 to end** 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. PostqualificationSection XII.
PostqualificationSection XII. PostqualificationSection
XII. PostqualificationSection XII. Postqualification**

The documents have been prepared assuming that prequalification has taken place. Exceptionally, with previous Bank approval, postqualification might be appropriate and, in such a case, the following Section 12 provides the necessary changes to the documents.

Section XII. Postqualification

Form of Invitation for Bids (IFB)

(without Prequalification)

Date: _____
[of issue of invitation]

Employer Contract Identification No.: _____

ADB Loan No.: _____

ADB Loan Name: _____

1. The [name of Borrower] has received³⁰ a loan [credit] from the the **African Development Bank**³¹ in various currencies towards the cost of [name of project], and it is intended that part of the proceeds of this loan will be applied to eligible payments under the contract³² for [name and identification number of Contract]. Bidding is open to all bidders from eligible source countries as defined in the **ADB Rules for Procurement**.
2. The [name of Employer and statement of its relationship to the Borrower, if different from the Borrower]³³ now invites sealed bids from eligible bidders for the construction and completion of [brief description of the Works and statement of the principal quantities involved].
3. Bidders may obtain further information from, and inspect and acquire the bidding documents, at the office of the Employer at [mailing address, street address, and cable/telex/facsimile numbers].³⁴
4. A complete set of bidding documents may be purchased by interested bidders at the above office upon payment of a nonrefundable fee of [insert amount and currency].³⁵
5. All bids must be accompanied by a security of [amount in the currency of the Employer's country],³⁶ or an equivalent amount in a freely convertible currency, and must be delivered to [address and exact location] at or

³⁰ Substitute "has applied for," if appropriate.

³¹ Substitute "credit" for "loan" and "IDA" for "IBRD," where appropriate.

³² Substitute "contracts" where bids are called concurrently for several contracts on a "slice and package" basis; add a new para. 2; and renumber paras. 2-5:

"2. Bidders may bid for one or several contracts, as further defined in the bidding documents. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so, provided those discounts are included in the Form of Bid or submitted in writing before the deadline for bid submission. All bids and offers of discounts shall be opened and evaluated simultaneously so as to determine the bid or combination of bids, including discounts, offering the lowest evaluated solution for the Employer."

³³ The Borrower and the Employer may be the same or different entities. The text of the Invitation for Bids should indicate the agency which will act as the Employer.

³⁴ The office for inquiries and issue of bidding documents and that for Bid submission may or may not be the same.

³⁵ The fee chargeable should only be nominal to cover reproduction and mailing costs and to ensure that only *bona fide* bidders will apply for bidding documents. An amount of between US\$50 and US\$500 equivalent is considered appropriate, depending on the size and complexity of the Works and the bidding documents.

³⁶ Insert the amount indicated in Sub-Clause 17.1 of Section 1, Instructions to Bidders, "Bid Security."

before *[time and date]*. Bids will be opened promptly thereafter in the presence of bidders' representatives who choose to attend.³⁷

³⁷ Coordinate with Clause 25 of Section 1, Instructions to Bidders, "Bid Opening."

Section XII. Postqualification

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 Documents: Procurement of Works*, last edition. The Employer must, in that case, provide the qualification criteria as indicated therein. Such approach requires modification of Clause 5 of the Instructions to Bidders and prior approval by the Bank. This information will not be incorporated in the Contract.

Qualification of the Bidder

Alternative A to Section 1A, Instruction to Bidders
To be used where prequalification *has not* taken place.

Sub-Clause 3.1(c) Delete.
Eligible Bidders

Sub-Clause 5.1 To be qualified for award of the Contract, bidders shall provide evidence satisfactory to the Employer of their capability and adequacy of resources to carry out the Contract effectively. Bids shall include the following information:

- (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 expressed as total volume of construction work performed in each of the last five years;
- (c) performance as prime contractor on works of a similar nature and volume 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 amounting to more than 10 percent of the Bid Price for each element;
- (g) 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;

- (h) evidence of access to lines of credit, and availability of other financial resources;
- (i) authority to seek references from the Bidder's bankers;
- (j) information regarding any current litigation in which the Bidder is involved, the parties concerned, and disputed amount; and
- (k) 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 firms as partners shall comply with the following requirements:

- (a) the Bid shall include all the information listed in Sub-Clause 5.1(a) to (j) above for each joint venture partner and 5.1(k) 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 agreement entered into by the joint venture partners shall be submitted with the Bid.

Sub-Clause 5.3

For the purposes of this particular Contract, bidders shall meet the following minimum qualifying criteria:^{xxx}

- (a) annual turnover in construction work of [*insert figure in international trading currency*]^{xxxi} equivalent;

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- (b) successful experience as prime contractor 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]*;^{xxxii}
- (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;^{xxxiii}
- (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;^{xxxiv} and

For projects which 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 which make up the package in question.

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; however, in order for a joint venture to qualify, each of its partners must meet at least 40 percent of those minimum criteria.^{xxxv} Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources shall not be taken into account in determining the Bidder's compliance with the qualifying criteria.

Sub-Clause 5.5

Domestic bidders and joint ventures of domestic and foreign Bidders applying for eligibility for a 7½-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.^{xxxvi}

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Clause 67: Settlement of Disputes: Version 1
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Sub-Clause 67.1
 Disputes Review
 Board

Sub-Clause 67.1 is substituted by the following:

“If any dispute arises between the Employer 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 by the signing of a Board Member’s Declaration of Acceptance (as required by paragraph 12 of Annex A to these Conditions of Particular Application) by all three Board Members.

“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 Employer 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 Acceptance, 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. 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 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.^{xxxvii}

“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

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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 Employer or the Contractor may refer a dispute to the Board in accordance with the provisions of Annex A to these Conditions of Particular Application.

"If either the Employer 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 Employer 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 Employer 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 Employer or the Contractor within 14 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon the Employer and the Contractor.

"Whether or not it has become final and binding upon the Employer 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 which have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.

"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 Employer shall give effect forthwith to every decision of the Engineer unless and until the same shall be revised as a result of the operation of this Sub-Clause 67.1 or, as hereinafter provided, in an arbitral award."

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^{xxxviii}

Sub-Clause 67.3 is modified to read as follows:

“Any dispute in respect of which the Recommendation, if any, of the Board has not become final and binding shall be finally settled by arbitration under the UNCITRAL Arbitration Rules. 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 related to the dispute.

“Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the Board for the purpose of obtaining its Recommendation(s) pursuant to Sub-clause 67.1. No Recommendation shall disqualify any Board Member 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 Employer, the Engineer, the Contractor and the Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

“The appointing authority shall be *[insert name of authority]*. The place of arbitration shall be *[insert place]* and the language of arbitration shall be *[insert language]*.”^{xxxix}

Sub-Clause 67.4
Failure to Comply
with Recommendation

Sub-Clause 67.4 is amended to read as follows:

“Where neither the Employer 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.”

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Annex A to Conditions of Particular Application (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 Employer, the Contractor, the Engineer, and one another any fact or circumstance which might be such as to cause either the Employer 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.
2. Except for its participation in the Board's activities as provided in the Contract and in this Agreement none of the Employer, the Contractor, and 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 which 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 Employer, 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 Employer 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.
6. The Board Members are independent contractors and not employees or agents of either the Employer 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 Employer and Contractor may agree in writing. This retainer shall be considered as payment in full for:
 - (A) Being available, on 7 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 Employer 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:

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- (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 Employer and the Contractor. The Contractor shall pay Members' invoices within 30 calendar days after receipt of such invoices and shall invoice the Employer (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 Employer shall pay such Contractor's invoices within the time period specified in the Construction Contract for other payments to the Contractor by the Employer.
- (e) Failure of either the Employer or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the Contract, entitling the non-defaulting 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 Employer 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 Employer 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 3 times in any period of 12 months. The timing of Site visits shall be as agreed among the Employer, 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 Employer, 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 settle the dispute. 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.
- (d) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the Board.
- (e) 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.
- (f) During the hearing, the Contractor, the Employer, 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 Employer, 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:

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- (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 Employer, 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.
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 Employer 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 Employer]* (the Employer) and *[name of contractor]* (the Contractor);
- (b) Clause 67 of the Conditions of Particular Application of the Construction Contract and Annex A to said Conditions provide 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 Annex A to said Conditions.
- 2. With respect to paragraph 1 of said Annex A, 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 sub-paragraphs (b) and (c).

BOARD MEMBER

_____ *[print name of Board Member]*

Date: _____

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Clause 67: Settlement of Disputes: Version 2 Clause 67: Settlement of Disputes: Version 2 Clause 67: Settlement of Disputes: Version 2 Clause 67: Settlement of Disputes: Version 2

Sub-Clause 67.1 Disputes Review Expert

Sub-Clause 67.1 is substituted by the following:

“If any dispute arises between the Employer 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 paragraph 12 of Annex A to these Conditions of Particular Application).

“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 Employer and the Contractor. If the DRE is not selected within 28 days of the date of the Letter of Acceptance, 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.”^{xl}

“In the event of death, disability, or resignation of the DRE, the latter shall be replaced by agreement between the Employer 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 Employer or the Contractor may refer a dispute to the DRE in accordance with the provisions of Annex A to these Conditions of Particular Application.

“If either the Employer 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 Employer 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 Employer 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 Employer or the Contractor within 14 days after the parties received such Recommendation from the DRE, the Recommendation shall become final and binding upon the Employer and the Contractor.

“Whether or not it has become final and binding upon the Employer 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 which have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.

“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 Employer shall give effect forthwith to every decision of the Engineer unless and until the same shall be revised as a result of the operation of this Sub-Clause 67.1 or, as hereinafter provided, in an arbitral award.”

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^{xli}

Sub-Clause 67.3 is modified to read as follows:

“Any dispute in respect of which the Recommendation, if any, of the DRE has not become final and binding shall be finally settled by arbitration under the UNCITRAL Arbitration Rules. 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 DRE related to the dispute.

“Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the DRE for the purpose of obtaining his Recommendation(s) pursuant to Sub-clause 67.1. No Recommendation shall disqualify the DRE 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 Employer, the Engineer, the Contractor and the DRE shall not be altered by reason of the arbitration being conducted during the progress of the Works.

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“The appointing authority shall be *[name of Authority]*. The place of arbitration shall be *[name of place]* and the language of arbitration shall be *[name of language]*.”^{xlii}

Sub-Clause 67.4

Failure to Comply
with Recommendation

Sub-Clause 67.4 is amended to read as follows:

“Where neither the Employer 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.”

Annex A to Conditions of Particular Application (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 Employer, the Contractor and the Engineer, any fact or circumstance which might be such as to cause either the Employer 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 Employer, the Contractor and or the Engineer shall solicit advice or consultation from the DRE on matters dealing with the conduct of the Works.

Section XIII. Disputes Resolution Procedure

3. The Contractor shall:
 - (a) Furnish to the DRE a copy of all documents which 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 Employer, 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 Employer 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.
6. The DRE is an independent contractor and not an employee or agent of either the Employer 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 Employer and Contractor may agree in writing. This retainer shall be considered as payment in full for:
 - (A) Being available, on 7 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

Employer 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 Employer and the Contractor. The Contractor shall pay the DRE's invoices within 30 calendar days after receipt of such invoices and shall invoice the Employer (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 Employer shall pay such Contractor's invoices within the time period specified in the Construction Contract for other payments to the Contractor by the Employer.
 - (e) Failure of either the Employer or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the Contract, entitling the non-defaulting 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 Employer 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 Employer and the Contractor and the

Section XIII. Disputes Resolution Procedure

Engineer at regular intervals, at times of critical construction events, at the written request of either party, and in any case not less than 3 times in any period of 12 months. The timing of Site visits shall be as agreed among the Employer, 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 Employer, 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 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 settle the dispute. 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.
- (d) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the DRE.
- (e) 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.
- (f) During the hearing, the Contractor, the Employer 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 Employer, 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 Employer, 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 Employer and to the Contractor:

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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 Employer]* (the Employer) and *[name of contractor]* (the Contractor);
- (b) Clause 67 of the Conditions of Particular Application of the Construction Contract and Annex A to said Conditions provide 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 Annex A to said Conditions.
- 2. With respect to paragraph 1 of said Annex A, 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 sub-paragraphs (b) and (c).

DISPUTES REVIEW EXPERT

_____ *[print name of DRE]*

Date: _____

**Clause 67: Settlement of Disputes: Alternative Arbitration
Procedure**
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Procedure**
Procedure
(applicable to FIDIC Clause 67)

Where Employers select the full provisions of Clause 67, as included in the FIDIC General Conditions of Contract, for dispute settlement in contracts between US\$10 million and US\$50 million, no particular provisions need be introduced provided the Appendix to Bid indicates that procedure.

Sub-Clause 67.3
Arbitration

Where it is decided by the Employer that a settlement of dispute procedure, other than that of the International Chamber of Commerce (ICC), should be used, Sub-Clause 67.3 may be varied accordingly. Bank recommended options are indicated below.

The Conditions of Contract should include provisions for the settlement of disputes. International commercial arbitration may have practical advantages over other dispute settlement methods. The Bank should not be named arbitrator nor be asked to name an arbitrator. The Bank does not object to the use of the ICC arbitration clause set forth in Sub-Clause 67.3 of the FIDIC General Conditions, but Employers may also wish to consider other settlement of disputes procedures, such as arbitration under the UNCITRAL Arbitration Rules of 1976 or conciliation under the UNCITRAL Conciliation Rules of 1980. Another acceptable approach would be to provide (a) for international conciliation or arbitration (under ICC, UNCITRAL, or other rules) in the case of a dispute with a foreign contractor; and (b) for adjudication/arbitration in accordance with the laws of the Employer's country in the case of a dispute with a contractor who is a national of the Employer's country. Employers who wish to substitute other settlement of dispute provisions for those set forth in Clause 67.3 of the FIDIC General Conditions should do so in Clause 67.3 of Part II—Conditions of Particular Application. They are strongly advised to use the advice of their lawyers for the purpose of drafting an amending provision.

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~~Section XIV. Eligibility for the Provision of Goods,
Works, and Services in Bank-Financed
Procurement~~
~~Section XIV. Eligibility for the Provision of
Goods, Works, and Services in Bank-Financed
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Procurement~~
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Goods, Works, and Services in Bank-Financed
Procurement~~
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Goods, Works, and Services in Bank-Financed
Procurement~~

As of January 1995

For the information of borrowers and bidders, and with reference to paragraph 1.6, footnote 9, of the *Guidelines: Procurement under IBRD Loans and IDA Credits*, dated January 1995, set forth below is a list of countries from which bidders, goods, and services are not eligible to participate in procurement financed by the bank or IDA.³⁸

_____ Andorra

_____ Brunei Darussalam

_____ Cuba

_____ Democratic People's Republic of Korea (North Korea)

_____ Liechtenstein

_____ Monaco

_____ Nauru

_____ San Marino

_____ Tuvalu

In addition, bidders, goods, and services from other countries or territories may be declared ineligible by a provision in bidding documents if the borrower's country has excluded them by a law, official regulation, or act of compliance meeting the requirements of paragraph 1.8(a) of the *Guidelines: Procurement under IBRD Loans and IDA Credits*.

³⁸ Any questions regarding this list should be addressed to the Chief, Procurement Policy and Coordination Unit, Operations Policy Department.

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^{i.} The circumstances, if any, under which the Engineer should seek the specific approval of the Employer should be defined in this sub-clause. Some Employers may wish not to include this optional clause, or to delete certain actions indicated in the example clause; other Employers 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. Employers 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.

^{ii.} 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 Employer's country, provided suitable candidates are available.

^{iii.} 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.

^{iv.} Partial earlier completion may not always produce net benefits to the Employer, 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.

^{v.} 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.

^{vi.} In some countries, it is not possible for the Employer 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.

^{vii.} In contracts involving various currencies, formulae or families of formulae which derive price adjustment factors for each currency are **essential**.

^{viii.} 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.

- ix. Insert a figure for factor **A** only where there is a part of the Contractors' expenditures which 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. The sum of **A**, **b**, **c**, **d**, etc., should be one.
- x. 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.
- xi. Sub-Clause 73.4 should apply where import duties and taxes are to be levied on the value of the Contractor's Equipment which 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 Employer wishes to exempt the Contractor from import duties, the sub-clause can be modified by deleting in the first sentence the word "initial" and concluding the sub-clause on the word "importation" of the same sentence.
- xii. The Bank requires that the language be English, French, or Spanish for International Competitive Bidding (ICB).
- xiii. 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.
- xiv. 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.
- xv. Insert the time for completion of the whole of the Works and also the time for completion of sections, if applicable.
- xvi. 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.
- xvii. Insert amounts of liquidated damages for sections, if applicable.
- xviii. Insert amounts of bonuses for sections, if applicable.
- xix. If specified in Sub-Clause 47.3.
- xx. 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.
- xxi. The advance payment is usually 10 to 15 percent, but may be up to 20 percent in special cases, and its

Section XIII. Disputes Resolution Procedure

repayment should commence only when about 30 percent of the Contract payments have been made.

xxii. The amount is usually 20 percent.

xxiii. A form of Bank Guarantee for Advance Payment is provided in Section 9.

xxiv. 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.

xxv. As guidance to bidders and for the purpose of checking their submissions, the Employer 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.

xxvi. The Employer shall enter the amount of the fixed element A in the tables below, and the source of indexing of local currency elements of cost.

xxvii. Use of this paragraph is mandatory when the revised text of Clauses 21, 23, and 25 is applied.

xxviii. 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)).

xxix. The second sentence is recommended for use in IBRD-financed contracts.

xxx. Delete from or add to the list as appropriate.

xxxi. Usually not less than 2.5 times the estimated annual payments under the Contract.

xxxii. Indicate an annual production rate for the key construction activity (or activities) in this project, e.g., "One million m³ 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.

xxxiii. Add requirements for other key personnel as necessary.

xxxiv. 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. The number of months is determined as the total time needed by the Employer to pay an invoice, allowing time to prepare the invoice, for the Engineer's time to certify it, and a two-month contingency.

xxxv. These conditions apply to joint ventures formed by enterprises with similar specialization, for contracts of a homogeneous nature. For contracts which involve different or highly specialized disciplines, and for very large contracts, the conditions may be modified.

xxxvi. Delete Sub-Clause 5.5 where not applicable (see Clause 32).

xxxvii. 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.

xxxviii. Sub-Clause 67.3 provides for dispute settlement under the UNCITRAL Arbitration Rules as set forth below. If the Borrower/Employer is unable to accept this approach, the Bank would be willing to accept other dispute settlement provisions (e.g., arbitration under different international rules or under the national rules of the Employer's country, or submission to local courts) if these provisions are clear and fair to both parties. If the Employer accepts UNCITRAL arbitration, the following provisions of this Sub-Clause 67.3 as well as of Sub-Clause 67.4 hereinafter may be used as they are. If the Employer prefers using different arbitration rules, the reference to UNCITRAL below should be correspondingly amended, while the rest of Sub-Clause 67.3 (with the possible exception of its last paragraph) as well as Sub-Clause 67.4 may be left as they are. Finally, if the Employer requires that disputes be settled by submission to local courts, the rest of this Sub-Clause 67.3 as well as Sub-Clause 67.4 would have to be substantially amended; some amendments would also have to be introduced in Sub-Clause 67.1 and in Annex A to these Conditions of Particular Application.

xxxix. Arbitration under the UNCITRAL Arbitration Rules is a form of unadministered or non-institutional arbitration. However, several arbitration centers offer to provide administered arbitration under rules based on the UNCITRAL Rules. These include the Regional Centers for Commercial Arbitration in Cairo and Kuala Lumpur. Parties wishing to refer to arbitration under such rules should consult the model clauses published by the centers concerned.

xl. 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.

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as Sub-Clause 67.4 would have to be substantially amended; some amendments would also have to be introduced in Sub-Clause 67.1 and in Annex A to these Conditions of Particular Application.

^{xiii.} Arbitration under the UNCITRAL Arbitration Rules is a form of unadministered or non-institutional arbitration. However, several arbitration centers offer to provide administered arbitration under rules based on the UNCITRAL Rules. These include the Regional Centers for Commercial Arbitration in Cairo and Kuala Lumpur. Parties wishing to refer to arbitration under such rules should consult the model clauses published by the centers concerned.