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Development in Africa

**STANDARD INSTRUCTIONS TO TENDERERS
AND
CONDITIONS OF CONTRACT
FOR THE PROCUREMENT OF WORKS OF
CIVIL ENGINEERING CONSTRUCTION**

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INTRODUCTION

This booklet contains Standard Instructions to Tenderers and Conditions of Contract approved by the Coordination Group consisting of the Islamic Development Bank, the Abu Dhabi Fund for Development, the OPEC Fund for International Development, the Saudi Fund for Development, the Arab Fund for Economic and Social Development, the Kuwait Fund for Arab Economic Development and the Arab Bank for Economic Development in Africa, hereinafter referred to individually as the "Financing Institution" and collectively as the "Financing Institutions". These Standard Instructions and Conditions are intended for use for the procurement of works of civil engineering to be financed by one or more of the Financing Institutions and which are required by a borrower from, or a beneficiary of financing by any of the Financing Institutions, such borrowers and beneficiaries hereinafter referred to, for the sake of convenience, as the "borrowers" and individually as the "borrower".

The booklet must be read against the background of the Guidelines for the Procurement of Goods and Works issued by the aforesaid Coordination Group and which must be observed by the borrowers in addition to any other particular requirements of the Financing Institution(s) providing financing for the particular project. Though the Standard Instructions to Tenderers assume the more common case of the projects funded by one or more of the Financing Institutions, where tenderers are pre-qualified, the alternative procedure of post-bidding qualification, which may be agreed with the Financing Institution(s), is also catered for in the Standard Instructions. However where post-bidding qualification is envisaged, it will be necessary to add in annex(es) to the Instructions the form(s) to be filled by interested Contractors for the purpose of qualification and which set out in detail the information and documents which must be furnished by such contractors. The Instructions also include a provision concerning alternative tenders for use in case such tenders are allowed.

In line with the usual practice in tender documents for works of civil engineering, the standard Conditions of Contract recommended in this booklet are divided into two parts, viz. General Conditions of Contract (Part I) and Conditions of Particular Application (Part II). The booklet adopts as General Conditions of Contract the "Conditions of Contract for Works of Civil Engineering Construction, Part I (General Conditions)" issued by Federation Internationale des Ingénieurs-Conseils (FIDIC), Fourth Edition, reprinted 1988 and 1992 with editorial amendments. As these

Conditions are not reproduced in this booklet, it will be necessary for the borrowers, for the purpose of using this booklet in preparing tender documents, to obtain the publication of FIDIC containing the said General Conditions directly from FIDIC. But, as will be noted from this booklet, it sets out detailed Conditions of Particular Application (Part II) amplifying and modifying the General Conditions of Contract (Part I)

These Conditions of Particular Application, despite their designation as such, are, in fact, of a general nature justifying their inclusion in the standard Conditions set forth in this booklet. The need may arise, however, to supplement them by other conditions or make minor modifications in them, if the special nature of the works to be executed so requires.

It is also presumed that, apart from the Drawings for the works to be executed, the borrower will prepare the technical Specifications for the works, the Bills of Quantities and such other documents as may be required in order that the tender documents for the procurement of the works may be complete.

In addition to the Standard Instructions to Tenderers and Conditions of Particular Application set forth in this booklet, it contains in Section I thereof two specimen forms of Invitation of Tenders, as Alternatives 1 and 2. Alternative 1 is designed for use in the more common case, referred to above, where tenders are to be invited from pre-qualified contractors, whereas Alternative 2 is designed for the case of open invitation without pre-qualification of the tenderers. Other forms are also provided, being set forth in annexes either to the Instructions to Tenderers or the Conditions of Contract. Such forms include the following:

1. Form of Tender and Appendix to the Tender.
2. Form of Tender Security (Bank Guarantee).
3. Form of Agreement.
4. Form of Performance Security.
5. Form of Bank Guarantee for the Advance Payment.

Though the use of the Standard Instructions to Tenderers and Conditions of Contract set forth or incorporated by reference in this booklet is not mandatory, such use is highly recommended to the borrowers, as it will facilitate the speedy processing and approval by the Financing Institution(s) of tender documents presented by the borrowers. These Standard Instructions and Conditions will assist the borrowers in the preparation of tender documents for works of civil engineering to be financed by one or

more of the Financing Institutions, as mentioned earlier, and serve as a check-list indicating to the borrowers the subject-matter which must be covered in such tender documents, if they are to be met with approval. Departure from the Standard Instructions to Tenderers and Conditions of Contract recommended in this booklet will be acceptable so long as the subject-matter contained in them is adequately covered in the proposed tender documents and the departure is justifiable on good grounds.

Finally, it remains to state that in recommending these Standard Instructions to Tenderers and Conditions of Contract the Financial Institutions do not accept, whether severally or jointly, any responsibility to any party using the said Standard Instructions or Conditions or entering into a contract based on them and any responsibility shall rest solely with such party.

(Alternative 1)

SECTION I. FORM OF INVITATION OF TENDERS¹

Date:

Invitation of Tenders No.:

To:[*name of pre-qualified Contractor*]
.....[*address of Contractor*]

1. As you have been pre-qualified with other contractors for the purpose of submitting tenders for the construction and completion of [*designation or short description of the Works*] (hereinafter called the Works) and the remedying of any defects therein, we hereby invite you to submit a tender, in a sealed envelope, for the said purpose.
2. The [*name of Borrower/ Beneficiary of financing*] has [*obtained/applied for*]² [*a loan/loans/financing*]³ from [*name of financing institution(s)*] for the financing of the Works and it is intended that part of the proceeds of the said loan(s)/financing will be applied towards the costs of the Works.
3. Further information about this Invitation of Tenders may be obtained from [*name, address and fax number of issuer of the invitation of tenders*].
4. A complete set of the tender documents may be obtained on submitting a written application to the aforesaid office and upon payment of a nonrefundable fee of [*currency and amount of required fee*].
5. Tenders must be submitted to the above-mentioned office not later than [*time*] on [*date*] and must be accompanied by a tender security, in accordance with the Instructions to Tenderers, in the amount of [*state fixed sum or percentage of amount of tender*].
6. Tenders will be opened in a session to be held at the office mentioned above and in the presence of representatives of tenderers who wish to attend. This session will take place at [*time and date*] or such other time and date as may be notified to the tenderers.
7. Please confirm, by fax, cable or telex, receipt of this letter and your intention to submit a tender or otherwise.

Yours truly,

.....[*authorized signature*]
.....[*name*]
.....[*designation*]

¹ This form is designed for use in the more common cases where tenders are to be invited from pre-qualified contractors.

² State as appropriate.

³ State as appropriate.

(Alternative 2)

FORM OF INVITATION OF TENDERS¹

Date:

Invitation of Tenders No.:

1. The *[name of issuer of invitation]* invites sealed tenders from eligible bidders for the construction and completion of *[designation or short description of the Works]* (hereinafter called the Works) and the remedying of any defects therein.
2. The *[name of Borrower/ Beneficiary of financing]* has *[obtained/applied for]² [a loan/loans/financing]³* from *[name of financing institution(s)]* for the financing of *[name of project]* and it is intended that part of the proceeds of the said loan(s)/financing will be applied towards the costs of the Works.
3. Eligible interested tenderers may obtain further information about this Invitation of Tenders from, and inspect the tender documents at the office of *[name, address and fax number of issuer of the invitation of tenders]*.
4. A complete set of the tender documents may be obtained by eligible interested tenderers on submitting a written application to the aforesaid office and upon payment of a nonrefundable fee of *[currency and amount of required fee]*.
5. Tenders must be submitted to the above-mentioned office not later than *[time]* on *[date]* and must be accompanied by a tender security, in accordance with the Instructions to Tenderers, in the amount of *[state fixed sum or percentage of amount of tender]*.
6. Tenders will be opened in a session to be held at the office mentioned above and in the presence of representatives of tenderers who wish to attend. This session will take place at *[time and date]* or such other time and date as may be notified to the tenderers.

¹ This form may be used in case of an open invitation without the prequalification of tenderers

² State as appropriate.

³ State as appropriate.

SECTION II. INSTRUCTIONS TO TENDERERS

A. GENERAL

1. Purpose of Tender Invitation

Tenderers are invited by
(hereinafter referred to as the Employer) for construction of the works comprised
inProject (the Project) as such works are
described in the tender documents accompanying these Instructions.

2. Interpretation

The terms used in these Instructions shall have the same meanings assigned to them
in Clause 1 (Definitions and Interpretations) of Part I (General Conditions) of the
tender documents, subject to any amendments stated in Part II (Conditions of
Particular Application). The words "tender" and "bid" are used here interchangeably
and shall have the same meaning and likewise any derivative of each shall have the
same meaning as the corresponding derivative of the other.

3. Financing

The Employer / the Government of
(hereinafter referred to as the Beneficiary) has applied for, or obtained financing
from(hereinafter referred to as
the financing institution(s)) to assist in meeting the cost of the Project. However the
proceeds of such financing will only be paid by the financing institution(s) at the
request of the Beneficiary in accordance with the loan(s) / financing agreement(s).

4. Eligibility

This invitation to bid is open only to prequalified⁽¹⁾ bidders who have the legal
capacity to bid and enter into contracts. Such bidders shall not at the time of
tendering or thereafter be ineligible to bid or subject to boycott under the rules
applied by the financing institution(s) referred to in Clause 3 of these instructions.

(1) Delete the word " prequalified if no prequalification by the Employer was undertaken and post-bidding qualification
will be made.

It is also a condition of eligibility that bidders should not be affiliated to any firm or company which has provided consulting services for the Works or is proposed to be engaged by the Employer for this purpose.

5. Language

The tender, contract documents and correspondence and documents relating to *the* Works shall be in the language(s).

6. Tender Documents The tender documents

comprise all the following:

1. Invitation to Tender.
2. Instructions to Tenderers.
3. Form of Tender and Appendix to the Tender.
4. Form of Tender Bond.
5. Conditions of Contract.

Part I: General Conditions of Contract for Works of Civil Engineering
(FIDIC, Fourth Edition) .

Part II: Conditions of Particular Application.

6. Technical Conditions and Specifications.
7. Drawings.
8. Bill of Quantities.
9. Form of Agreement.
10. Form of Performance Security.
11. Form of Bank Guarantee for Advance Payment.

The above-mentioned tender documents and other related documents, as may be issued by the Employer or agreed with the successful bidder before award of the contract, shall apply in accordance with the order of precedence stated in Clause 5.2 of the General Conditions of Contract, subject to any amendment in the Conditions of Particular Application or the Form of Agreement.

7. Information to Tenderers

The volume(s) under this title shall not form part of the Contract. The information contained in such volume(s), relating to general conditions in the project area, results of any geotechnical investigations, the likely sources of certain materials, availability of water and any other matters is merely intended to assist bidders during tendering. The Employer does not accept responsibility for the information contained in the said volume(s) except insofar as otherwise stated in the tender documents.

8. Receipt of Tender Documents and Contact Person

The tenderer shall confirm in writing by mail, telex or facsimile transmission receipt of the tender documents and advise the Employer of the name, address and facsimile number of the person authorized to receive, on behalf of the prospective tenderer, any further information and instructions by the Employer and any addenda to the tender documents.

9. Costs

The Tenderer shall bear all costs associated with the preparation and submission of his tender. The Employer shall under no circumstances be responsible for such costs.

10. Single Bids

No bidder may submit either separately or as a partner in a joint venture more than one bid, except, however, insofar as alternative bids are allowed.

11. Closing Date for Submittal of Bids

Bids shall be submitted and delivered by mail, courier service or by the bidder or an agent thereof-in person no later thanhours on at the address of the Employer stated below:

.....
.....
.....
.....

Any bid received after the closing time stated in this Clause will be rejected and returned unopened to the Bidder submitting such bid.

12. Amendment of Tender Documents

The Employer may at any time before the closing time for submittal of bids amend the tender documents by issuing an addendum or addenda in writing to all prospective bidders who obtained the tender documents. Such addendum or addenda shall form part of the tender documents and all prospective bidders shall promptly acknowledge by mail, telex or facsimile transmission the receipt of same. The time for submittal of bids may be extended as appropriate by the Employer to enable prospective bidders to take any addendum into account in the preparation of their bids. In case of an important addendum, at least 10 days will be allowed before the closing date for submittal of bids.

13. Clarification of Tender Documents

Any prospective bidder may at any time, but not later than 21 days before the closing date for submittal of bids, request in writing clarification of any matter stated in the bidding documents and the Employer will respond to such request in writing by circular letter to all bidders who obtained the tender documents, but without identifying the source of the request for clarification.

14. Pre-tendering Site Visit and Meeting

Each bidder is required to visit and inspect the site and surroundings and certify in a letter submitted with his tender that he has done so. The Employer may organize a pre-tendering conference to which all prospective tenderers, who obtained the tender documents, will be invited. The time and place of such conference will be communicated in writing to all such prospective bidders. Each bidder shall bear the cost of his site visit and of attending such conference.

15. Qualifications of Bidders

[The following alternative Clauses 15.1 and 15.2 are to be used if the bidders have not been prequalified for the Project.]

15.1. Each bidder shall submit the following as part of the bid information in order to update information submitted with his application for prequalification or

confirm that such information has not changed. In any case information concerning the following must be submitted:

- (i) Confirmation of availability of lines of credit and other financial resources to the bidder.
- (ii) Financial projections for the current year and the two following years, taking into account known commitments of the bidder.
- (iii) New work commitments since the bidder's application for pre-qualification.
- (iv) Any current litigation in which the bidder is involved.
- (v) The continued availability of equipment required for execution of the works.

15. 2. Each bidder must satisfy the following minimum qualifications:

- (a) Have a minimum annual turnover of construction work of not less than an amount determined in accordance with the following formula:

$$\text{Minimum Annual Turnover} = \frac{\text{the bidder's price} \times 12 \times 1.5}{\text{No. of Months of Construction of the Works}}$$

- (b) Have experience as main contractor in the construction of at least two projects of similar nature and comparable value to the Project during the last 10 years.
- (c) Be able to assign a contractor's agent with not less than 10 years experience.
- (d) Be able to make available the essential equipment set out in Annex I hereto and required as a minimum for construction of the Works.
- (e) Have liquid assets and/or credit lines, net of other liabilities and exclusive of advance payments which may be made under the Contract, of not less than the equivalent of an amount determined in accordance with the following formula:

$$\frac{\text{the bidder's price} \times 4}{\text{No. of months of construction of the Works}}$$

15.3. In order to enable post-bidding qualification to be made where the bidders have not been prequalified, each tenderer shall submit the following documents and information with his tender:

- (a) notarially authenticated copies of (i) the documents whereby the bidder's firm or company was established or organized, (ii) an authenticated copy of the certificate of registration of the bidder's firm or company and (iii) if the bidder is a company, the original or an authenticated copy of a certificate of maintenance of its registration.
- (b) total value of construction works executed by the bidder in each of the last 5 years.
- (c) number of contracts for the construction of works of a similar nature and comparable value to the Project or of a higher value executed by the bidder during the last 10 years and a statement of the value of each contract and the name and address of the employer in each case.
- (d) details of construction works currently being executed by the bidder and which the bidder, is contractually committed to execute but are not yet commenced, including the value of each contract and the equivalent thereof in (currency) and the name and address of the employer in each case.
- (e) audited financial statements (profit and loss statements, balance sheets and cash flow statements) of the bidder for the last five years.
- (f) details of line(s) of credit available to the bidder, including amount(s) and name of bank(s) making available such line(s) of credit.
- (g) letter(s) authorizing the Employer to seek references from the bidder's bankers.
- (h) names and qualifications of senior management and technical personnel in the bidder's organization.
- (i) names and qualifications of key personnel proposed to be assigned by the bidder for execution of the Project.
- (j) major items of equipment which the bidder will make available for the execution of the works and information whether such equipment is the bidder's own or will be purchased or hired.
- (k) information on any subcontract relating to the Works proposed by the bidder, including the name and address of any subcontractor to whom the bidder proposes to subcontract 10% or more of the value of the Works.
- (l) proposed method and program for construction of the Works.
- (m) information on any litigation in which the bidder was involved during the last five years and is involved at present, including the names of the parties concerned and the amounts in dispute.

16. Bids by Joint Ventures

In addition to furnishing the information required under Clause 15 of these Instructions, joint venture partners submitting a bid shall in respect of each of them, also comply with the following requirements:

- (i) Sign the bid and, if their bid is accepted, also sign the Form of Agreement or alternatively authorize one of the partners by a duly executed power(s) of attorney to sign the bid and, if successful, also the Form of Agreement on behalf of the other partners in addition to himself.
- (ii) Submit with their bid an authenticated copy of the joint venture agreement between or among the partners.
- (iii) Submit with their bid a statement to the Employer that, if the contract is awarded to the joint venture, the joint venture partners agree to be jointly and severally liable in respect of any matter for all obligations of the joint venture under the Contract.
- (iv) Designate one of their number by virtue of a duly executed power(s) of attorney as authorized representative of the joint venture, with the power, if their bid is successful, to incur liabilities and accept instructions on behalf of any and all the partners throughout the entire execution of the contract and also to receive payments on behalf of the partners in the joint venture from the Employer.

B. PREPARATION OF TENDERS

17. Forms and Schedules

The bidder shall use, fill-in and furnish the Form of Tender and Appendix thereto, such form being shown in Annex II hereto, the Form of Tender Security, Bills of Quantities and any other forms and schedules contained in the tender documents, except any form relating to alternative bids, if invited, which may be submitted at the option of the bidder. The tenderer shall also submit with his bid any information or material required under these instructions and may, if necessary, provide additional sheets. Failure to use and fill-in the forms which are mandatory in accordance with the above may result in the bid being rejected. All entries shall either be typed or printed in indelible ink, without interlineation or erasures.

18. Technical Specifications and Standards

Technical specifications and standards prescribed as the bases on which, among other things, the tenders are to be prepared, shall be deemed to be the latest edition including amendments and substitutions made by the issuers thereof not less than 28 days before the closing date for submission of tenders.

19. Bid Prices

- 19.1. The bid submitted by the bidder shall be deemed to cover all materials, equipment and work necessary for the Works, and the bidder shall fill-in the rates and prices for all items included in the Bills of Quantities. If the bidder fails to do so with respect to any item, the price of such item shall be deemed to be covered by the rates and prices for other items in the Bills of Quantities which have been priced by the bidder, and he shall not be entitled to payment for execution of the item or items which have not been priced.
- 19.2. All duties, taxes and other levies payable by the Contractor in any country shall be deemed to be included in his rates and prices and the total price offered by him, except that duties, taxes and levies imposed by law and payable by the Contractor in the Employer's country shall be deemed to be included in the bidder's rates and prices and total price only insofar as such duties, taxes and levies have been in force 28 days before the closing date for submittal of bids.
- 19.3. If so stated in the tender documents, the rates and prices quoted by the bidder shall be subject to adjustment under Clause 70 of the General Conditions of Contract, as amended, if so, in the Conditions of Particular Application. For this purpose the bidder shall furnish in the Appendix to the Tender the indices and weightings for price adjustment and shall submit with his bid such other supporting informations required under clause 70 of the Conditions of Contract. If so requested by the Employer, the bidder shall justify his proposed weightings.

20. Currency of the Bid

Unless otherwise required in the tender documents, the bidder shall quote all his prices in the currency of the Employer's home country, but he may require payment of a percentage or percentages of the Contract Price in one more foreign currencies not exceeding two. The tenderer shall state in his bid a detailed justification for payment of such percentage or percentages in a foreign currency or currencies and shall use for determining such percentages the selling rate of exchange published by the Central Bank, or other institution performing the functions of a Central Bank in the Employer's country, 28 days before the closing date for submission of bids. The bidder shall expressly state such rate in his bid which shall be used as the basis for determining the amounts payable in foreign currency.

21. Period of Tender Validity

Tenderers shall remain bound by their tenders for a period of days from the closing date for submittal of bids. Any tender stated to be valid for a shorter time will be rejected by the Employer.

[The following clause to be used if alternative tenders are allowed.]

22. Alternative Bids by Tenderers

The tenderer shall submit a tender which conforms to all terms, conditions and specifications of the tender documents, and may, as an additional separate offer submit an alternative proposal or solution, clearly marked as "Alternative Tender".

When the alternative proposal of the tenderer comprises variations to the design on which the main offer is based, the tenderer shall give a written confirmation that he is responsible for the design of the alternative solution and for the construction and completion of the alternative solution.

Any variation from the conforming tender shall be described clearly and in detail in a preamble to the respective variation including reference projects where the alternative solution has successfully been implemented as well as other details such as a shorter construction period and/or the financial implications of the alternative solution by comparison to the conforming tender.

The alternative proposal shall include all information necessary for evaluation of such proposal, including drawings, design calculations, technical specifications, a complete bill of quantities with a breakdown of prices and the construction methodology and program. The tenderer must prove that the program of his alternative proposal is practicable and that it meets all requirements of the Project.

23. Tender Security

23.1. The tender shall be accompanied by a tender security in the form of a certified cheque or of a bank guarantee issued or endorsed by a bank acceptable to the Employer. Such bank guarantee shall be in the form shown in Annex III hereto and shall be valid for the period required for the validity of tenders.

23.2. Any tender not accompanied by the required tender security will be rejected. The tender security of a joint venture must be in the name of the joint venture partners submitting the tender.

23.3. The tender securities of unsuccessful tenderers will be returned to them within 30 days after the expiration of the period of tender validity.

23.4. The tender security of the successful tenderer will be released promptly after signature of the Agreement and submittal by him of the performance security required under Clause 10 of the General Conditions of Contract.

23.5. The tender security of a tenderer shall be forfeited:

- (i) if the tenderer withdraws his tender before expiry of the period of tender validity.
- (ii) in the case of the successful tenderer, if he fails within the prescribed time limit either to sign the Form of Agreement or furnish the required performance security.

24. Signature of Tenders

The tender and all copies thereof shall be signed by the tenderer or a person duly authorized on his behalf. Proof of such authorization in the form of a power of attorney shall accompany the tender. All pages of the tender where entries or amendments have been made shall be initialed by the tenderer or on his behalf by a person duly authorized as aforesaid.

C. SUBMISSION OF TENDERS

25. Format of Tender

Tenders shall be submitted in one original comprising all documents mentioned in Clause 26 of these Instructions, bound with the section containing the Form of Tender and Appendix to the Tender and clearly marked "ORIGINAL". In addition the tenderer shall submitcopies of the tender clearly marked "COPIES". In case of any discrepancy between the Copies and the Original, the Original shall prevail.

26. Contents of Tender

The tender shall in accordance with the requirements stated in the tender documents comprise the following:

- (i) The completed Form of Tender and Appendix thereto,
- (ii) The tender security,
- (iii) The completed Bills of Quantities,
- (iv) The completed schedules of supplementary information,
- (v) The certification of site visit,
- (vi) All information on any subcontract envisaged,
- (vii) The tender price and currency or currencies of payment,
- (viii) The minutes of any pre-tendering conference and other relevant correspondence issued during the tendering period.

27. Technical Proposal

The following documents shall be submitted with the tender, in one original and..... copies and in one folder marked "Technical Proposal":

- (i) Information stating the names of senior personnel and key staff of the tenderer to be assigned to the Project, together with their curriculum vitae, and an organizational chart of his proposed site staff.

- (ii) Details of equipment and plant which will be available for use in executing the Works.
- (iii) Performance program proposed by the tenderer.
- (iv) Organizational and methodology proposed for execution of the Works.
- (v) Staff assignment schedule.

28. Sealing and Marking of Tenders

- 28.1. The tenderer shall put and seal the Original and each Copy of his tender in separate envelopes marked "ORIGINAL" and "COPIES". The envelopes shall then be put in an outer envelope which shall be sealed. All such envelopes shall be addressed to the Employer at his address stated in Clause 11 of these Instructions, bear the name and identification number of the Project or Contract and a warning that they shall not be opened before the date for opening of bids.
- 28.2. The inner envelopes shall state the name and address of the tenderer for returning the tender to him in case it is not received at or before the closing time for submittal of bids.

29. Modification, Substitution or Withdrawal of Tenders

The tenderer may modify, substitute or withdraw his tender by written notice to the Employer before the closing time for submittal of tenders. Such modification, substitution or withdrawal shall be contained in a sealed envelope marked as "Modification", "Substitution" or "Withdrawal of Tender". No modification, substitution or withdrawal of a bid will be accepted after the closing time for submittal of bids.

D. BID OPENING AND EVALUATION

30. Bid Opening

30. 1. Bids will be opened by the Employer in a session to which all bidders will be invited, the time and place being stated in the invitation addressed to the tenderers. Each bidder may attend in person, or designate an authorized representative to attend on his behalf, and shall sign a register of attendance.
- 30.2. Envelopes marked "Withdrawal" or "Substitution" will be opened first and the name of the bidder submitting the same shall be announced. Bids in respect of which a notice of withdrawal or substitution was duly received before the closing time for submittal of bids will not be opened.

- 30.3. The remaining bids will then be opened and the Employer will announce the bidders' names, the bid prices, including any alternative bid prices, the presence (or absence) of tender security and any such other details as the Employer may consider appropriate. The envelopes marked "Modifications" will then be opened and their content read out in appropriate detail.
- 30.4. The Employer will prepare minutes of the tender opening session, including the information announced during the session. Such minutes are for the administrative purposes of the Employer and the bidders shall not be entitled to receive copies thereof.

31. Confidentiality of Process of Evaluation of Bids

All information concerning the examination, clarification and evaluation of bids and the recommendation for award are confidential and will not be disclosed to bidders or to any person not officially concerned with such process until award to the successful bidder. Any attempt by any bidder to influence the process of evaluation of bids or award will lead to the rejection of his bid.

32. Clarification of Bids

The Employer may request any bidder to clarify any matter in his bid, including the breakdown of his unit rates. Such request will be made in writing, but no bidder will be allowed to make, through any clarification given by him, any change in the price or substance of his bid.

33. Determination of Responsiveness of Bids

33.1. Prior to the detailed evaluation of bids the Employer will examine each tender to determine whether it (a) meets the eligibility criteria set forth in Clause 4 of these Instructions, (b) has been properly signed, (c) is accompanied by the required bid security, (d) is valid for the period required and, (e) is substantially responsive to the requirements of the tender documents. For this latter purpose, a substantially responsive tender is one which conforms to all terms, conditions and specifications stated in the tender documents without any material deviation or reservation. A material deviation or reservation is one which (a) affects in a substantial way the price, scope, quality, performance or the required timing of execution and completion of the Works, or (b) limits in any substantial way, inconsistent with the tender documents, the rights of the Employer or obligations of the tenderer, and (c) whose rectification would unfairly affect the competitive position of the tenderers who have presented substantially responsive bids.

33.2. If a tender is found not to be substantially responsive, it may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation and it will be rejected by the Employer.

34. Correction of Errors

34.1. The Tenders determined to be substantially responsive will be checked by the Employer for any arithmetical errors. The Employer shall have the right to correct such errors using the following method:

- (a) Where there is a discrepancy between the amounts stated in figures and the amount stated in words the latter shall govern.
- (b) Where there is an error in any amount resulting from the multiplication of a unit rate for an item by the quantity thereof, the unit rate shall govern and the product of the multiplication shall be corrected accordingly, 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 stated will govern and the unit rate will be corrected accordingly.
- (c) The total tender price will be recalculated on the basis of correction of errors in the manner stated in paragraph (b) above, or if there are no such errors by correcting any errors in the summation of the prices for the various line items in the Bills of Quantities. The total price arrived at after either of these corrections shall be deemed to be the correct total price of the tender, unless the total price stated in the tender is lower than the corrected total tender price, in which case the former shall be deemed as the correct tender price and the tenderer shall be deemed to have offered a discount to be applied pro rata to the prices of all items in the Bills of Quantities.

34.2. The correction and adjustment of the tender prices and total tender price resulting from the application of the methods for correction stated in this Clause 34 shall be binding on the tenderer and if he does not accept the corrected amount of his bid, he shall forfeit his tender security.

E. EVALUATION AND COMPARISON OF TENDERS

35. The Bids to be Evaluated

Only bids determined to be substantially responsive will be evaluated and compared with one another by the Employer.

36. Currency of Evaluation Tender prices will be evaluated and compared on the basis of the currency stipulated in Clause 20 for the tenders. For this purpose, however, the amount(s) representing the percentage or percentages of each tender price payable in a foreign currency or currencies, as required in the tender, shall be ascertained in such currency or currencies using the rate of exchange stated in the tender. The amount(s) so ascertained shall be reconverted to the currency of the Employer's country on the basis of the selling rate(s) published on the day of opening of bids by the Central Bank or other institution performing the functions of a Central Bank in the Employer's country and the amounts of bids, as adjusted pursuant to Clause 34, shall be compared on this basis and other bases stated in these Instructions.

37. Determining the Lowest Evaluated Bid

- 37.1. For evaluation of the bids, the Employer will determine the evaluated bid price for each bid by adjusting the bid price, as determined in accordance with Clauses 34 and 36 of these Instructions, as follows:
- (a) excluding Provisional Sums, but including Daywork where priced competitively;
 - (b) making an appropriate adjustment on sound technical and/or financial grounds for any quantifiable acceptable deviations or reservations or alternative offers;
 - (c) making an allowance in financial terms for completion time or times, which are different, if allowed, from those stated in the tender documents .
- 37.2. The estimated effect of price adjustment provisions in the Conditions of Contract over the period of execution of the contract shall be disregarded in the evaluation of bids.
- 37.3. If the Lowest Evaluated Bid is seriously unbalanced or front-loaded by comparison to the Engineer's estimate of the costs of the various items of work to be performed under the Contract, the Employer may require justification of such imbalance and the rectification thereof if not satisfied with the explanation given by the tenderer. Unless such imbalance is rectified, the Employer may require increase of the amount of the performance security required under Clause 10 of the Conditions of Contract, so that the Employer's interest may be sufficiently protected in the event of default of the successful bidder in performing the Contract.

38. Preference for Certain Bidders

- 38.1. Domestic bidders from the Employer's country and bidders from the country or member countries of the financing institutions(s) ⁽²⁾ will be accorded a margin of preference of% ⁽³⁾ in the comparison of bids, provided they satisfy the following conditions:
- (a) be registered in the Employer's country or in the country or one of the member countries of the financing institution(s) and have majority ownership by nationals of such country or countries.
 - (b) not subcontract more than% ⁽⁴⁾ of the Works, measured in terms of the Contract Price, excluding provisional sums, to contractors who would not have been eligible for the aforesaid margin of preference.
- 38.2. Joint ventures between partners eligible for the margin of preference and other partners who do not qualify for such preference, shall be eligible for the margin of the preference provided that:
- (a) the partners who are eligible for the margin of preference have a beneficial interest of not less than 50% in the joint venture as demonstrated by the terms of the joint venture agreement; and
 - (b) the partner or partners who are eligible for the margin of preference, will execute, under the joint venture arrangement, at least % of the Works measured in terms of the Contract Price, excluding provisional sums.
- 38.3. A bidder who considers himself eligible for the margin of preference provided for in this Clause shall submit with his bid all necessary information and evidence substantiating such eligibility.
- 38.4. Alternative bids, where allowed, will be evaluated separately in accordance with Clause 22 of these Instructions and shall be subject to the margin of preference in accordance with Clause 38 of these Instructions.

F. AWARD OF CONTRACT

39. Award

Subject to Clause 40 and to the application of Clause 38 of these Instructions, 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 as determined in accordance with Clause 37.

(2) In case the Arab Bank for Economic Development in Africa participates in financing the Works, insert after the word "institution(s)" the expression or from any African country".

(3) This percentage to be determined in agreement with the financing institution(s).

(4) This percentage to be determined in agreement with the financing institution(s).

40. Annulment of Tender Procedure

The Employer reserves the right to accept or reject any tender or to annul the tendering process and reject all tenders at any time prior to the award of the Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Employer's action.

41. Notification of Award

41.1. Prior to expiration of the period of validity of bids, as such period may be extended with the agreement of the successful bidder, the Employer will notify the successful bidder in writing by registered letter that his 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 to the Contractor in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").

41.2. Pending signature and entry into force of the Contract, the notification of award will constitute a Contract between the Employer and the successful bidder.

42. Signature of Contract

The successful bidder shall on such date as notified to him by the Employer sign the Form of Agreement constituting the Contract for execution of the Works. The Form of Agreement is appended hereto as Annex IV.

43. Furnishing of Performance Security

Within 30 days of receipt of the Letter of Acceptance the successful bidder shall furnish to the Employer a Performance Security as stipulated in Clause 10 of the General Conditions of Contract, being in conformity with the form prescribed for this purpose in the tender documents.

44. Failure to Sign Contract or Furnish Performance Security

Failure of the successful bidder to comply with the requirements of Clauses 42 and 43 shall constitute a breach of contract and cause for the annulment of the award and forfeiture of the tender security. The Employer may also seek any other remedy under the Contract and may resort to awarding the Contract to the next ranked bidder.

ANNEX I
MINIMUM EQUIPMENT REQUIRED

ANNEX II
FORM OF TENDER AND APPENDIX TO THE TENDER

Date:

Invitation of Tenders No.:

To: *[Name of the Employer /Issuer of Invitation of Tenders]*

[Address of the Employer /Issuer of Invitation of Tenders]

Dear Sirs,

Subject: Invitation of Tenders No.....
For *[Name of Project]*

1. Having examined the tender documents, including, in particular, the Conditions of Contract, the Specifications, Drawings and Bills of Quantities *[as well as Addenda Nos.and, if any]* we, the undersigned, offer to execute and complete *[insert description of the Works]* (hereinafter referred to as the Works) and to remedy any defects therein, all in conformity with the said tender documents for the sum of:

.....

[Insert amount in figures]

.....

[Insert amount in words]

or such other sum as determined in accordance with the said Conditions of Contract and other documents of such contract as may be concluded between us.

2. We confirm that the Appendix to this Tender forms an integral part thereof.

3. We undertake, if our Tender is accepted, to commence the Works as soon as reasonably possible after receipt of the Engineer's notice to commence and to complete the whole of the Works within the Time for Completion stated in the Appendix to this Tender.

4. We undertake, if our Tender is accepted, to provide a performance security in an amount equivalent to percent of the Contract Price for the due performance of the Contract, such performance security being in accordance with the requirements stated in the tender documents and the form prescribed therein.

5. We agree to abide by this Tender for a period of days from the closing date for the submittal of tenders, and this Tender shall remain valid and binding upon us for the said duration and may be accepted by you at any time before expiry of the period stated.

6. Until a formal contract is prepared and executed, this Tender and your written acceptance thereof shall constitute a binding contract between us.

7. We confirm that we recognize that you are not bound to accept the lowest or any other bid received by you.

Yours truly,

[Name of Tenderer]

By: [Signature of Authorized Representative]

[Name of Authorized Representative]

[Designation/Capacity]

Witness: *[Signature]*

[Name]

[Occupation]

[Address]

**FORM OF
APPENDIX TO THE TENDER
Conditions of Contract
Sub-Clause**

The Employer	1.1 (a) i	The Employer is <i>[Insert Name]</i>
Language	5.1 (a)	The language is <i>[Insert language]</i>
Law	5.1 (b)	The law to be applied is the law of <i>[State country or state]</i>
Performance Security	10.1	.....percent of Contract Price
Minimum Amount of Third Party Insurance	23.2	.....per occurrence, with the number of occurrences unlimited
Time for Issue of Notice To Commence	41.1	..... days
Time for Completion	43.1	..... days <i>[or insert date]</i>
Amount of Liquidated Damages	47.1	..... per day
Limit of Liquidated Damages	47.1	..... percent of final Contract Price
Defects Liability Period	49.1	..... days
Percentage for Adjustment of Provisional Sums	59.4 (c)	..... percent
Percentage of Invoice Value of Listed Materials and Plant	60.1 (c)	..... percent
Percentage of Retention	60.2	..... percent of Interim Payment Certificate

Limit of Retention Money	60.2 and 60.3	10 percent of Final Contract Price
Minimum Amount of Interim Payment Certificate	60.2	
Maximum Amount of Advance Payment	60.4	10 percent of the Contract Price
Commencement of Repayment of Advance Payment	60.4	After certification of percent of the Contract Price
Monthly Recovery of Advance Payment	60.4	percent of the amount of monthly Interim Payment Certificate
Rate of Compensation on Unpaid Sums for Delay in Payment	60.11	percent per annum
Notices to the Employer and The Engineer	68.2	The address of the Employer is:

[Insert Name and Address] The address of the Engineer is:
.....
[Insert Name and Address]

Foreign Currency/ Currencies and Proportion(s) of the Contract Price 72.2 Required

Rate(s) of Exchange
[Foreign currency(ies) and proportions to be stated by tenderer]
[Tenderer shall state the selling rate(s) published by a certain entity in the Employer's country. e.g. Central Bank, 28 days before closing date for submittal of tenders]

Signature
Name of Tenderer:
:

ANNEX III
FORM OF TENDER SECURITY
(BANK GUARANTEE)

Whereas, *[name and address of Employer]* (hereinafter called the Employer) invited tenders for the construction and completion of Works *[state designation or short description of the Works]* and the remedying of any defects therein, and it is required, in accordance with the Instructions to Tenderers, that each tender be accompanied by a tender security; and

Whereas, *[name of tenderer]* (hereinafter called the Tenderer) has submitted a tender dated (hereinafter called the Tender).

NOW, THEREFORE, in consideration of the Tender being entertained by the Employer alongside other tenders, we *[name of bank]*, having our registered office at *[address of bank]*, (hereinafter called the Bank), hereby undertake and bind ourselves, our successors, to pay to *[name of the Employer]* the sum of *[amount in figures and words]* upon the following conditions:

1. If, after the closing date for the submittal of tenders and during the period of validity of the Tender specified by the Tenderer in the Form of Tender, the Tenderer withdraws the Tender; or
2. If the Tenderer, having been notified by the Purchaser during the period of validity of the Tender of the acceptance thereof:
 - (a) fails or refuses to execute the Form of Agreement in accordance with Instructions to Tenderers; or
 - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Tenderers,

We undertake to pay to the Purchaser the above-mentioned amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that the Purchaser states in its demand that the amount claimed therein is due to the Purchaser owing to the occurrence of one or both of the above conditions and specifies the condition or conditions which have occurred.

This Guarantee shall remain in force up to and including the date falling thirty (30) days after the period of validity of the Tender, as such period may be extended with the agreement of the Tenderer, notice of which extension(s) is hereby waived by the Bank. Any demand in respect of this Guarantee shall be presented to the Bank not later than the date specified above.

Done in *[name of city]* on theday of *[month]* of *[year]*.

[Signature(s) on behalf of the Bank]
[Name(s) of Authorized Representative(s)]
[Designation(s)]
[Seal of the Bank]

ANNEX IV
FORM OF AGREEMENT

This Agreement made the [] day of [month] of [year], between [name of the Employer] of [country of the Employer] (hereinafter called the "Employer") of the one part, and [name of the Contractor] of [city and country of the Contractor-] (hereinafter called the "Contractor") of the other part.

Whereas the Employer is desirous that certain works be executed, viz., [brief description of the works], as such works are more fully described in the documents incorporated by reference herein (said works hereinafter referred to as "the Works").

Whereas the Employer has accepted a tender by the Contractor of the execution, and completion of the Works and the remedying of any defects therein. said tender being in the sum of:

.....

[Insert amount in [figures]

.....

[Insert amount in words]

NOW, THEREFORE, the parties hereto have agreed as follows:

1. In this Agreement, and unless otherwise required by the context, words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract.

The following documents (hereinafter referred to, together with this Agreement, as the "Contract Documents") shall be deemed to form and be read and construed as part of this Agreement, viz:

- (1) The Letter of Acceptance;
- (2) Minutes of Meeting(s), if any, and correspondence, if any, during pre - contract negotiations as listed below:
..... *[state minutes of meeting(s) and correspondence, as necessary, with relevant dates];*
- (3) Form of Tender and the Appendix to the Tender submitted by the Contractor;
- (4) The Conditions of Contract (Part II);
- (5) The Conditions of Contract (Part I);

- (6) The Technical Specifications;
- (7) The Drawings;
- (8) The Bills of Quantities;
- (9) Other document(s), if any, forming part of the Contract *[state such document(s)]*.

3. In case of conflict between any provision of this Agreement and a provision in any other document forming part of the Contractor Documents, the provisions of this Agreement shall prevail. Subject to the foregoing, the Contract Documents shall take precedence in the order in which they appear in the preceding Clause 2 of this Agreement.
4. 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 to remedy any defects therein in conformity in all respects with the provisions of the Contract.
5. The Employer hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying of any defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and delivered in *[place of signature]* in originals, all to the same and one effect, on the day and year first above written.

[Name of the Employer]

[Name of the Contractor]

By: *[Signature of authorized representative of the Employer]*

By: *[Signature of authorized representative of the Contractor]*

[Name and designation of representative of the Employer]

[Name and designation of representative of the Contractor]

In the presence of:

[Name of witness] [Name of witness]
[Signature of witness] [Signature of witness].....

SECTION III. PART I - GENERAL CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT PART I - GENERAL CONDITIONS

The General Conditions of Contract, Part I. shall be those formin^s Part I 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), but the Form of Tender and Appendix thereto and the Form of Agreement attached to the said Conditions shall be deemed to be excluded and substituted, respectively, by the Forms shown in Annexes I and III to the Instructions to Tenderers. The aforesaid General Conditions of Contract, Part I, are subject to the amendments and additions stated in Part II of the Conditions of Contract, said Part being entitled "Conditions of Particular Application". The General Conditions of Contract and Conditions of Particular Application shall be read together and in case of any conflict or inconsistency between the conditions contained in them, the Conditions of Particular Application set forth in Part II shall prevail.

Copies of FIDIC Conditions of Contract, referred to above, may be obtained from:

FIDIC Secretariat
P.O.Box 86
CH 1000 Lausanne 12
Switzerland

Fax No.: + 41 21 653 5432

SECTION IV. PART II - CONDITIONS OF PARTICULAR APPLICATION

The General Conditions (Part I, FIDIC Fourth Edition, 1987, Reprinted 1988 and 1992 with Editorial Amendments) incorporated by reference in this Contract shall be deemed as subject to the following amendments:

1. (I) Sub-Clause 1.1. (a) (i): The Employer is

(2) Sub-Clause 1.1. (a)(iv): Sub-Para (a)(iv) of Sub-Clause 1.1 is deleted and the following is substituted therefore:

"Engineer" means the Engineer designated as such here below or other Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as the Engineer for the purposes of the Contract in place of the Engineer so designated.

"Pursuant to and subject to the foregoing the Engineer is

..... ."

2. Sub-Clause 1.1.(b)(i): The words "if completed" appearing in the third line and at the end of the paragraph are deleted.

3. Sub-Clause 1.1.(b) (vii): The words between brackets "if any" are deleted.

4. Sub-Clause 1.1. (d) A new sub-paragraph (iii) is added in Sub-Clause 1.1. (d) reading as follows:

"Defects Liability Certificate" means the final certificate of completion of the Works issued by the Engineer certifying that the Works have been completed and any defects therein have been remedied by the Contractor."

5. Sub-Clause 2.1.(b): The last sentence of paragraph (b) is deleted.

6. Sub-Clause 2.1.(c) : The following words are added at the end of this Sub-Clause:

"or to order any works involving delay or any extra payment by the Employer or to make any variation of or in the Works or the Contract."

7. Sub-Clause 4.1.: The words "the Engineer" in the third line are deleted and the words "the Employer" are substituted therefore.

8. Sub-Clause 5.1 (a): The language of the Contract is the
..... language.

(b): The applicable law shall be the law in force from time to time
in country of the Employer.

9. Sub-Clause 5.2: The words "if completed" appearing in subparagraph (1) in this
Sub-Clause are deleted.

10. Sub-Clause 6.1: The words "Unless otherwise provided by the Contract" are added
before the words "the Drawings" at the beginning of the Sub-Clause.

11. Sub-Clause 10.1: The Security, referred to in Sub-Clause 10.1, shall be in the form
shown in Annex I hereto.

12. Sub-Clause 11.1: This Sub-Clause is deleted and the following is substituted
therefore:

"11.1. The Contractor shall be deemed to have inspected and examined the Site and
its surroundings and to have satisfied himself before submitting his Tender
as to:

- (i) the nature of the hydrological and climatic conditions,
- (ii) the ground and sub-surface conditions (so far as it is practicable) and
having taken into account any information in connection therewith which
may have been provided by or on behalf of the Employer, provided the
Contractor shall make his own interpretation thereof,
- (iii) the form and nature of the Site,
- (iv) the extent and nature of the work and materials necessary for the
completion of the works,
- (v) the means of communication and access to the Site,
- (vi) the accommodation he may require,
- (vii) and, in general, shall be deemed to have obtained for himself all
necessary information, subject as above mentioned, as to risks,
contingencies and all other circumstances which may influence or
affect his Tender".

13. Sub-Clause 12.1: After the word "Quantities" and the comma appearing in the third
line, the following words are inserted:

"and the schedule of rates and prices, if any,"

14. Sub-Clause 12.2: This Sub-Clause is deleted and the following is substituted
therefor:

"12.2. If however during the execution of the Works, the Contractor encounters
artificial obstructions or physical conditions, other than climatic conditions or
conditions due thereto, on the site, which obstructions or conditions could

not, in his opinion, have been reasonably foreseen by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer with a copy to the Employer, and if the Contractor is of the opinion that additional costs will be incurred as a result thereof, he shall, if he intends to make any claim for additional payment, give notice to the Employer as well as the Engineer specifying the artificial obstructions or physical condition encountered, details of the anticipated effects thereof, the measures he is taking or proposing to take, together with an estimate of the costs thereof and the extent of the anticipated delay or interference with the execution of the Works. Following receipt of such notice, the Engineer may, inter alia:

- (a) approve in writing such measures with or without modification,

- (b) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with."

15. Clause 12: (1) A new Sub-Clause 12.3 is added reading as follows:

"12.3. No claim for additional costs in respect of artificial obstructions or physical conditions shall be entertained unless notice as above mentioned has been served within the time specified in Clause 53.1."

(2) A new Sub-Clause 12.4 is added reading as follows:

"12.4. To the extent that the Engineer is of the opinion that the whole or part of the aforesaid physical conditions or artificial obstructions, could not reasonably have been foreseen by an experienced Contractor, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and

- (b) the amount of any costs which may have been reasonably incurred by the Contractor by reason of encountering such conditions or obstructions and to which the Contractor is entitled ."

16. Sub-Clause 13.1: The words between brackets "or his delegate" are deleted and the following is substituted therefore:

"or, subject to the limit of the authority conferred on them in accordance with Sub-Clauses 2.3 and 2.4, the Engineer's Representative and his Assistants:"

17. Sub-Clause 13.2: A new Sub-Clause 13.2 is added:

"Sub-Clause 13.2. If the contractor is of the opinion that any instruction issued by the Engineer under this Clause is such as would entitle him to additional payment on the grounds that such instruction is not within the purview of the Contract or cannot be reconciled with its express or implied terms unless it is considered as a variation of the Contract, then, without prejudice to the obligation of the Contractor to comply with such instruction, the Contractor shall, immediately upon receipt of same, give notice to the Employer and the Engineer of his intention to claim additional payment and furnish, within 28 days from the date of issue of the instruction in question, particulars of such claim. Should the Contractor fail to comply with these requirements, he shall be deemed to have waived any claim arising from such instruction of the Engineer".

18. Sub-Clause 20.2: The words "rectify such loss or damages so that the Permanent Works conform", appearing in the fourth and fifth lines, are deleted and the following is substituted therefore:

"repair and make good the same, so that, at completion, the Permanent Works shall be in good order and condition and in conformity."

19. Sub-Clause 20.4: Paragraph (h) of Sub-Clause 20.4 is deleted and the following is substituted therefore:

"(h) any operation of the forces of nature which could not reasonably have been foreseen by an experienced contractor or against which such contractor could not be reasonably expected to provide by taking precautionary measures or by way of insurance."

20. Sub-Clause 21.2: Sub-paragraph (a) is deleted and the following is substituted therefore:

"(a) the Employer and the Contractor, from the start of work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the works or any section or part thereof, as the case may be, against all loss or damage from whatsoever cause arising, other than the risks stated in Clause 24, provided, however, that with respect to the Employer's risk defined in Paragraph (g) of Sub-Clause 20.4, such exclusion shall be limited to loss of or damage to any part of the Works resulting from a cause solely due to a faulty design thereof provided by the Engineer, but shall not extend to any consequent loss of or damage to any other part of the works."

21. Sub-Clause 21.4: This Sub-Clause is deleted.

22. Sub-Clause 26.1: (1) The first 2 lines of Sub-Clause 26.1 are deleted and the following is substituted therefore:

"The Contractor shall give all notices and pay all fees required under, and conform in all respects with, the provisions of:"

In sub-paragraph (a) the word "applicable" is inserted after the word "authority" in the second line.

23. Sub-Clause 27.1: The words "by the Contractor or any of his subcontractors "are inserted after the word "Site" in the second line.

24. Sub-Clause 31.2: (1) The words "other contractor, or by the Employer or such authority as aforementioned are inserted after the words "by any such" in the first line of sub-paragraph (b) of Sub-Clause 31.2.

(2) The words "other contractor or for the Employer or such authority as aforementioned" are inserted after the words "any such" at the end of sub-paragraph (c).

(3) The last 3 lines of Sub-Clause 31.2 are deleted and the following is substituted therefore:

"the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 after consultation with the Employer and the Contractor".

25. Sub-Clause 34.1: The following sentences are added at the end of Sub-Clause 34.1.

"Insofar as suitable local labour is available the Contractor shall employ such labour. He shall only import expatriate skilled labour if such labour is not available locally. The Contractor shall arrange for the repatriation of imported expatriate labour when they are no longer required for the execution of the works.

26. Sub-Clause 34: (1) A new Sub-Clause 34.2 is added reading as follows:

"Sub-Clause 34.2. "The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Engineer's Representative, an adequate supply of potable and other water for the use of the Contractor's staff and labour."

- (2) A new Sub-Clause 34.3 is added reading as follows:
"Sub-Clause 34.3. The Contractor shall observe any local laws prohibiting or restricting the importation sale, barter or supply of any alcoholic liquor or drugs or other disposition therein, and shall not permit or suffer the contravention of such laws by his sub-contractors, agents or employees."
- (3) A new Sub-Clause 34.4 is added reading as follows:
"Sub-Clause 34.4. The Contractor shall not give, barter or otherwise dispose to any person or persons of, any arms or ammunition of any kind or permit or suffer the same as aforesaid."
- (4) A new Sub-Clause 34.5 is added reading as follows:
"Sub-Clause 34.5. The Contractor shall in all dealings with labour in his employment have due regard to all recognized festivals, days of rest and religious or other customs."
- (5) A new Sub-Clause 34.6 is added reading as follows:
"Sub-Clause 34.6. 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."
- (6) A new Sub-Clause 34.7 is added reading as follows:
"Sub-Clause 34.7. The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same."
- (7) A new Sub-Clause 34.8 is added reading as follows:
"Sub-Clause 34.8. The Contractor shall not induce the personnel of the Employer or the Engineer to leave their regular employment and shall not, except with the prior written consent of the employer, engage any personnel who has left the service of the Employer or the Engineer within the preceding 12 months."
- (8) A new Sub-Clause 34.9 is inserted reading as follows: "Sub-Clause 34.9. The Contractor shall be responsible for observance by his sub-contractors of the foregoing provisions."
- 27. Sub-Clause 36.3:** Sub-paragraph (a) of this Sub-Clause is deleted and the following is substituted therefore:

" (a) Clearly intended by or provided for in the Contract or reasonably required in accordance with the practice in the construction industry to ascertain the quality, characteristics or strength of materials or of any part of the Works, or."

28. Sub-Clause 36.4: Sub-paragraph (a) of this Sub-Clause is amended to read as follows:

"(a) not so intended by or provided for in the Contract or reasonably required as aforesaid in sub-paragraph (a) of Sub-Clause 36.3."

29. Sub-Clause 36.5: Sub-Clause 36.5 of the general Conditions in Part I is renumbered as Sub-Clause 36.6 and a new Sub-Clause 36.5 is inserted reading as follows:

"36.5. If the Engineer suspects that any materials, plant or workmanship incorporated in any part or parts of the Works may not be in accordance with the provisions of the Contract, he may require the Contractor to carry out any test which in the opinion of the Engineer is necessary to verify the quality of such part or parts of the Works and the cost of such test so required shall be borne by the Contractor if it shows that such part or parts of the Works are not in accordance with the provisions of the Contract. But if otherwise, Sub-Clause 36.6 shall apply."

30. Sub-Clause 36.6: The words "Sub-Clauses 36.4 and 5" are substituted for the words "Sub-Clause 36.4" appearing in the first line of the Sub-Clause renumbered 36.6.

31. Sub-Clause 38.2: Sub-Clause 38.2 is deleted and the following is substituted therefore:

"38.2. The Contractor shall uncover any part or parts of the works, or make openings in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of Sub-Clause 38.1 and are found to be executed in accordance with the Contract, the Engineer shall, after consultation with the Employer and the Contractor, determine the amount of Contractor's costs in respect of such uncovering, making openings in or through, reinstating and making good the same, provided that the Contractor has, upon receipt of the Engineer's order, and in any case before the start of uncovering or making openings, given written notice to the Engineer and the Employer of his intention to claim such expenses. In any other case all costs shall be borne by the Contractor."

32. Sub-Clause 40.3: (1) The words "a period of 91 days" are substituted for the words "a period of 84 days" in the third line of Sub-Clause 40.3.

(2) The words "an event of default" appearing in the 11th line of the Sub-Clause are deleted and the words "a repudiation of the Contract" are substituted therefor.

33. Sub-Clause 41.1: The words "or the Employer" are inserted after the words "the Engineer" in the second line.

34. Sub-Clause 51.1: This Sub-Clause is deleted and the following is substituted therefor:

"51.1. (a) Subject to any restrictions or requirements of the approval of the Employer stated in sub-paragraph (b) of this Sub-Clause, the Engineer may issue instructions to the Contractor ordering any variation of the form, quality or quantity of the Works or any part thereof or any specified sequence, method or timing of construction, provided that the Engineer may, notwithstanding any restriction or requirement as aforesaid, give any order, of whatsoever nature, if, in his opinion an emergency has arisen and such order is necessary to deal with such emergency.

"Subject to the foregoing the Engineer shall have the power to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract.
- (b) omit any such work
- (c) change the character or quality or kind of such work.
- (d) change the levels, lines, positions and dimensions of any part of the Works.
- (e) execute additional work of any kind necessary for the completion of the works.
- (f) change any specified sequence, method or timing of construction of any part of the Works.

"No such variation shall in any way vitiate or invalidate the Contract but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price. Provided that when the issue of an instruction to vary the Works is necessitated by some default of or breach of Contract by the Contractor or for which he responsible, any additional cost attributable to such default shall be borne by the Contractor.

"(b) Without prejudice to the power of the Engineer to issue variation or other orders as may be necessary, in his opinion, to deal with an emergency

situation, the specific and prior approval of the Employer shall be required with respect to any variation order involving additional cost amounting or estimated to amount to *[state currency and amount]* or more, or if the aggregate value of all previous variation orders resulting in additional costs exceeds the amount of *[state currency and amount]."*

35. Sub-Clause 51.2: This Sub-Clause is deleted and the following is substituted therefore:

"51.2. No such variations shall be made by the Contractor without an instruction in writing by the Engineer with a copy to the Employer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities. Provided also that if for any reason the Engineer shall consider it desirable to give any such instruction verbally, the Contractor shall comply with such instruction and any confirmation in writing of such verbal instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall within seven days of his receipt of a verbal instruction confirm the content thereof in writing to the Engineer, with a copy to the Employer, and such confirmation is not contradicted in writing within fourteen days by the Engineer, the verbal instruction so confirmed shall be deemed to be an order in writing by the Engineer."

36. Sub-Clause 52.1: This Sub-Clause is deleted and the following is substituted therefor:

"52.1. All extra or additional work done or work omitted by order of the Engineer shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the extra or additional work, then suitable rates and prices, based so far as may be reasonable on the Contract rates and prices, shall be agreed, after due consultation with the Employer, by the Engineer with the Contractor. Failing such agreement, the Engineer shall fix such rates and prices as are, in his opinion, appropriate."

37. Sub-Clause 52.2: The first paragraph of Sub-Clause 52.2 is deleted and the following is substituted therefore:

"52.2. Provided that if the quantity of any item in the Bill of Quantities is increased or decreased as a result of a variation order or orders made pursuant to Clause 51 hereof by more than 25% such that, by reason of the nature or amount of such increase or decrease in relation to the nature or amount of the whole of the Works, the rate or price contained in the Contract for such item is rendered unreasonable or inapplicable then a suitable adjustment, either upwards or downwards, of such rate or price shall be agreed after due consultation with the Employer, by the Engineer with the Contractor. In the event of disagreement, the Engineer shall fix such new rate or price for application to the item in question as shall, in his opinion, be reasonable and proper having regard to the circumstances."

38. Sub-Clause 52.3: (1) The first 6 lines of this Sub-Clause are deleted and the following is substituted therefore:

"If at the time of issue of the Taking-Over of the Certificate, it is found that as a result of:

- (a) the aggregate effect of all variation orders valued under Sub-Clauses 52.1 and 52.2, and
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding all Fixed Sums, Provisional Sums, dayworks and adjustments of the prices made under Clause 70 or according to any provision in Part II for revision of prices."

(2) The number and words appearing in the second, third and fourth lines of the second paragraph of Sub-Clause 52.3 and reading "15 per cent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price excluding Provisional Sums and allowance for daywork, if any)" are deleted and the following is substituted therefore:

"20 per cent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price stated in the Contract Agreement excluding all Fixed Sums, Provisional Sums and allowance for dayworks, if any)".

(3) The number "20" is substituted for the number "15" appearing in the last line, but one, of Sub-Clause 52.3.

39. Sub-Clause 53.1: The words "or otherwise" appearing in the second and third lines are deleted.

40. Sub-Clause 53.3: The words "if required by the Engineer so to do" appearing in the last sentence of Sub-Clause 53.3 are deleted.

41. Sub-Clause 53.4: This Sub-Clause is deleted and the following is substituted therefor:

"53.4. If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as, in the opinion of the Engineer, can be reasonably investigated and is verified to his satisfaction by the contemporary records brought to his notice on timely basis for such investigation."

42. Sub-Clause 53.5: This Sub-Clause is deleted.

43. Sub-Clause 54.1: This Sub-Clause is deleted and the following is substituted therefor:

"54.1 (a) All Contractor's Equipment, Temporary Works, Plant and Materials provided by the Contractor shall, when brought on the Site be deemed to be exclusively intended and reserved for the execution of the works and insofar as such Contractor's Equipment and Temporary Works are owned by the Contractor or by a Company in which the Contractor has a controlling interest, the same and all Plant and Materials shall when brought on the Site be deemed the property of the Employer. The foregoing is without prejudice to the right of the Contractor to use such Equipment, Temporary Works, Plant and Materials for the purpose of executing the Works and shall not affect his responsibility for the costs of maintenance, use or operation of the same.

(b) No Contractor's Equipment, Temporary Works, Plant and Materials shall be removed from the Site without the written consent of the Engineer, whose consent shall not be unreasonably withheld when the same are no longer immediately required for the purpose of completion of the works.

(c) The Contractor shall, upon bringing any Contractor's Equipment Temporary Works or materials for the construction of any Temporary Works on the Site, notify the Engineer in writing, if the same or any part thereof is owned by a third party stating the name and address of such third Party, and in the case of *any such* Equipment, Temporary Works or Materials for such Temporary Works, being hired from a third party, the Contractor shall ensure that the Agreement relating to such hire includes a provision whereby such third party agrees to the provisions of paragraphs (a) and (b) of this Sub-Clause subject to payment of the agreed hire-charge either by the Contractor or the Employer, at his option, if the Contractor fails to effect such payment. Any such payment made by the Employer shall be recoverable by him from the Contractor and the Employer shall be entitled to deduct the same from any monies due to the Contractor."

44. Sub-Clause 54.7: A comma followed by the word "Plant" are inserted after the words "Temporary Works" in the last line of this Sub-Clause.

45. Sub-Clause 54.8: The word "Plant" and a comma are inserted before the word "materials" in the second line of this Sub-Clause, and the words "plant or" are inserted before the word "materials" in the third and last line.

46. Sub-Clause 54.9: A new Sub-Clause 54.9 is added reading as follows:

"Upon the removal from the Site, with the consent of the Engineer, of any Contractor's Equipment or Temporary Works as have been deemed to have become the property of the Employer under Sub-Clause 1 of this clause, the property therein shall be deemed to revert in the contractor or such company under the control of the Contractor as might have been the owner of such Contractor's Equipment or Temporary Works when the same were brought on the Site. Upon final completion of the works and issue of the Defects Liability Certificate the property in the remainder of such Contractor's equipment and Temporary Works as well as the property in the remainder of any plant and materials brought by the contractor on the Site shall revert in the contractor or other rightful owner of the same, as the case may be."

47. Sub-Clause 60.1: (1) In sub-paragraph (c) the words "in accordance with the approved construction programme" are inserted after the word "Site" in the second line.

(2) The words "or otherwise" appearing at end of sub-paragraph (e) are deleted. A new paragraph is added at the end of the Sub-Clause 60.1 reading as follows:

"Each statement submitted by the contractor under this Sub-Clause shall give a breakdown of the amounts to which the Contractor considers himself entitled into local and foreign currency or currencies in accordance with the statement of foreign currency requirement in the Contract."

48. Sub-Clause 60.2: At the end of sub-paragraph (b) a comma is inserted instead of the full stop and the following words are added:

'including, without necessarily being limited to, such sum or sums as may be deductible under the contract for the recovery of any advance payment or mobilization loan made by the Employer to the Contractor.'

49. Sub-Clause 60.3: The marginal note of this clause is amended to read "Retention Money". Paragraphs (a) and (b) are renumbered as paragraphs (b) and (c) respectively and a new paragraph (a) is inserted reading as follows:

"(a) A retention amounting to 10 per cent of the amount included in each monthly interim payment certificate as due to the Contractor on account of the Permanent or Temporary Works executed by the Contractor shall be deducted by the Engineer in the first and subsequent interim payment certificates until such time as the cumulative total of deductions (herein referred to as the Retention Money) shall amount to
.....* percent of the Contract Price as adjusted as a result of extra or additional works if the value of such work reaches 10 per cent or more of the Contract Price stated in the Contract Agreement."

50. Sub-Clause 60.4: Sub-Clauses 60.4 to 60.10 are renumbered 60.5 to 60.11 and a new Sub-Clause 60.4 with the marginal note "Advance Mobilization Loan" is inserted reading as follows:

"60.4 (a) The Employer will make an interest-free advance payment to the Contractor for the costs of mobilization in respect of the Contract Works in a lump sum amount equivalent to 10 per cent of the accepted Bid Amount less provisional sums, payable in the proportionate amounts of foreign and local currencies as provided for in the Contract. Payment of the advance will be due for separate certification by the Engineer after execution of the Form of Agreement by the parties thereto, and provision by the Contractor of the Performance Security in accordance with Clause 10 hereof, and submittal of a bank guarantee in the form appended hereto or as approved by the Employer, issued by a bank acceptable to the Employer in an amount equal to the advance. Such bank guarantee shall remain effective until the advance has been completely repaid by the Contractor out of current earnings under the Contract, and certified accordingly by the Engineer. A form of bank guarantee acceptable to the Employer is shown in Annex II hereto. The advance shall be used by the Contractor exclusively for mobilization expenditures, including the acquisition of plant and equipment, in connection with the Contract Works. Should the Contractor apply any portion of the advance for a purpose unrelated to the contract work, it shall become due and payable immediately, and no further advance will be made to the Contractor thereafter.

"(b) The advance payment shall be repaid by percentage deductions from the interim payments certified by the Engineer in accordance with Clause 60 of the

* This percentage to be filled in and it is usually fixed at 10 percent or 5 percent as a minimum.

General Conditions of Contract, as amended. Such deductions shall be made at the rate ofpercent⁽¹⁾ of the amount of each Interim Payment Certificate, commencing as of the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached percent⁽²⁾ of the Contract Price stated in the Letter of Acceptance less Provisional Sums; and, if the advance payment was made in more than one currency, deductions shall be made in the types and proportionate amounts of such currencies. Deductions shall continue until the advance payment has been repaid in full; provided always that it shall be so repaid prior to the time when percent⁽³⁾ of the Contract Price has been certified to the Contractor."

51. Sub-Clause 60.7: The words "or otherwise" appearing at the end of sub-paragraph (b) of the renumbered Sub-Clause 60.7 are deleted.

52. Sub-Clause 60.11: (1) The number "49" in the renumbered Sub-Clause 60.11 is substituted for the number "28" in the third line and the number "63" is substituted for the number "56" in the fifth line.

(2) The word "interest" in the last line but three is deleted and the words "compensation for such delay" are substituted therefore.

53. Sub-Clause 62.1: (1) The words "and delivered to the Employer" appearing in the second line are deleted and the following words are substituted therefore: "with the approval of the Employer and delivered to him," (2)

(2) The last sentence of Sub-Clause 62.1 is deleted.

54. Sub-Clause 63.1 : (1) The word "substantial", in the 7th and 10th lines of Sub-Clause 63.1, is deleted.

(2) In sub-paragraph (b) (ii), the words "with due dispatch and diligence" are inserted after the word "proceed" in the first line.

(3) In Sub-Paragraph (d) the words "is not executing the Works in accordance with the Contractor" are inserted after the words "in writing," after the comma,

(1) This percentage should be fixed at an appropriate level so that the advance payment may be recovered in full by the time a certain percentage, usually 80 or 85 percent, of the Contract Price has been certified to the Contractor.

(2) This percentage is usually fixed at 20 percent.

(3) As stated in note (1) above, this percentage is usually fixed at 80 or 85 percent of the Contract Price.

- (4) The word "authorities" appearing in the last line, but four, of Sub-Clause 63.1 is deleted and the word "powers" is substituted therefore.
- (5) In the last line of Sub-Clause 63.1, the word "Plant" is inserted after the word "Works".
- (6) The following sentence is added at the end of Sub-Clause 63.1:

"The Employer may at any time sell any of Contractor's Equipment and Temporary Works, which have been deemed to have become the property of the Employer upon being brought on the Site, as well as any used materials and apply the proceeds of such sale in or towards the satisfaction of any sums due or which may become due to the Employer from the Contractor under the contract".

- 55. Sub-Clause 65.8:** Sub-paragraph (c) of this Sub-Clause is deleted and Sub-paragraphs (d), (e), and (f) are renumbered, respectively as (c), (d) and (e).
- 56. Sub-Clause 67.1:** (1) After the word "Whatsoever" in the first line of Sub-Clause 67.1, a comma is inserted followed by the words "excluding any dispute relating to any claim by the Contractor which, contrary to the provisions of Sub-Clause 53.1, is not notified to the Engineer,".
- (2) In the eighth line of the third paragraph of Sub-Clause 67.1, the words "to commence arbitration" are deleted and the words "to refer the matter to arbitration" are substituted therefore.
- 57. Sub-Clause 67.2:** In the first line of this Sub-Clause, the words "to refer the matter to arbitration" are substituted for the words "to commence arbitration".
- 58. Sub-Clause 67.3:** (1) The words "under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules" appearing in the 6th, 7th and 8th lines of Sub-Clause 67.3 are deleted and the following is substituted therefore:

"by arbitration in accordance with the provisions of⁽¹⁾
[State the rules of arbitration desired in lieu of the Rules of Conciliation and Arbitration of the International Chamber of Commerce. Such rules may be the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules or the arbitration rules of a regional centre for arbitration

(1) This amendment of Sub-Clause 67.3 is inserted in order to cater for the possibility of stipulating arbitration in accordance with rules other than the rules specified in the original Sub-Clause.

or local arbitration rules. Detailed provisions should be stated concerning the number of arbitrators, mode of appointment of the arbitrator(s), time limit for the appointment of or agreement on the arbitrator(s), failing which appointment may be made by a particular entity or agency, designation of such entity or agency, if and to the extent that the selected rules of arbitration are silent on such matters. In addition, the venue and language of the arbitration should be designated.]

- (2) In the third paragraph, of Sub-Clause 67.3 the opening words "Arbitration may be commenced prior to or" are deleted and the words "Arbitration may only be commenced" are substituted therefore.

Alternative Provision*

58. (A) Sub-Clause 67.1: (1) The words "or an arbitral award" appearing at the end of the 2nd. paragraph of Sub-Clause 67.1 are deleted and the words "a court decision" are substituted therefore.

- (2) The word "arbitration" appearing in the 8th, 10th and 11th lines of the third paragraph of Sub-Clause 67.1 and in the 2nd line of the last paragraph of the said Sub-Clause are deleted and the words "court proceedings" are substituted therefore.

(13) **Sub-Clause 67.2:** The word "arbitration" appearing in the 1st, 3rd and 5th lines of Sub-Clause 67.2 are deleted and the words "court proceedings" are substituted therefor.

(C) Sub-Clause 67.3: (1) The expression "shall be finally settled, under such Rules." appearing in the 6th, 7th and 8th lines of Sub-Clause 67.3 is deleted and the following is substituted therefore: "shall be submitted to the court of competent jurisdiction in the Employer's country".

- (2) The words "The said arbitrator/s shall have full power" appearing in the 8th and 9th lines of Sub-Clause 67.3 are deleted and the words "Either party may request the court" are substituted therefore.

(3) The words "such arbitrator/s" appearing in the 11th. line of Sub-Clause 67.3 and the word "arbitrator/s" appearing in the 15th. line of the said Sub-Clause are deleted and the words "the court" are substituted therefore.

(*) Though arbitration may be more suitable for the settlement of disputes arising from construction contracts, especially international contracts, the above 'Alternative Provision' has been inserted to cater for situations where the Employer is a public entity and arbitration is not acceptable to it either because of a legal impediment under the law of its country or as a matter of general policy.

(4) In the last paragraph of Sub-Clause 67.3 the opening words "arbitration may be commenced prior to or" are deleted and the words "court proceedings may only be commenced" are substituted therefore, and the word "arbitration" appearing in the 3rd. line of the said paragraph is deleted and the words "court proceedings" are substituted therefore.

(D) Sub-Clause 67.4: (1) The words "commence arbitration of a dispute" appearing in the 2nd line of Sub-Clause 67.4 are deleted and the words "commence court proceedings for the resolution of a dispute" are substituted therefore.

(2) The words "refer the failure to arbitration" appearing in the 5th. line of Sub-Clause 67.4 are deleted and the words "submit the failure to the court" are substituted therefore.

59. Sub-Clause 68.2: For the purposes of this Sub-Clause, the addresses are those specified in the Appendix to the Tender.

60. Sub-Clause 69.1: (1) In sub-paragraph (a) of this Sub-Clause the number "60" is substituted for the number "28".

(2) Sub-paragraph (b) of Sub-Clause 69.1 is deleted, and the succeeding sub-paragraphs (c) and (d) are renumbered respectively, as (b) and (c).

(3) The renumbered sub-paragraph (b) of Sub-Clause 69.1 is deleted and the following is substituted therefore:

"being a corporation or a firm, becoming bankrupt or going into liquidation other than for the purpose of a scheme of reconstruction or amalgamation."

(4) The last three lines of Sub-Clause 69.1 are deleted and the following is substituted therefore:

"the Contractor shall be entitled to terminate his employment under the Contract after giving sixty days' prior written notice to the Employer, with a copy to the Engineer."

61. Sub-Clause 69.2: The number "60" is substituted for the number "14" in the first line of Sub-Clause 69.2.

62. Sub-Clause 69.4: The number "60" is substituted for the number "28" appearing in the fourth and sixth lines of Sub-Clause 69.4.

63. Clause 73: (1) A new Clause 73 with a Sub-Clause numbered 73.1, with the

marginal heading "Taxation at Origin", is inserted reading as follows:

"Sub-Clause 73.1. The prices bid by the Contractor shall be deemed to include all taxes, duties and other charges imposed outside the Employer's country under the laws and regulations of the country of origin on the production, manufacture, sale and transport of the equipment, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract."

- 64. Sub-Clause 73.2:** A new Sub-Clause 73.2, with the marginal heading "Local Taxes", is inserted reading as follows:

"Sub-Clause 73.2. Subject to any exemptions granted to the Contractor from custom duties and import duties, the prices bid by the Contractor shall be deemed to include all custom duties, import duties, business taxes, income and other taxes that may be levied according to the laws and regulations in force at the time of bidding in the Employer's country on the equipment, materials and supplies (both permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Unless otherwise expressly stated in the Contract, the Contractor shall be responsible for payment of tax on all profits made by him in respect of the Contract."

- 65. Sub-Clause 73.3:** A new Sub-Clause 73.3, with the marginal heading "Personal Income Tax" is inserted reading as follows:

"Sub-Clause 73.3. The Contractor's personnel and employees are 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."

- 66. Sub-Clause 73.4:** A new Sub-Clause 73.4, with marginal heading "Duties on Equipment" is added reading as follows:

"Sub-Clause 73.4. Notwithstanding the provisions of Sub-Clause 73.2, construction equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be 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 equivalent to the full import duties and taxes which would be payable on the assessed imported value of such equipment and spare parts, and callable in the

event of non-export from the Employer's country. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon export of any individual item of equipment or spare parts and upon completion of the Contract, the Contractor shall make and agree with the customs authorities an assessment of the residual value of the equipment and spare parts to be exported. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (i) the difference between the initial imported value and the residual value of equipment and spare parts to be exported, and (ii) on the initial imported value of that equipment and spare parts remaining in the Employer's country after completion of the Contract. Upon payment of such dues by the Contractor within 30 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 of the balance remaining."

- 67. Clause 74:** A new Clause 74 with a Sub-Clause numbered 74.1, with the marginal heading "Bribery and Collusion" is added reading as follows:

"Sub-Clause 74.1. The Employer shall be entitled to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination if the Contractor shall have offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, any action in relation to obtaining, or in the execution of, the Contract or any other contract with the Employer, or for showing favour to any person in relation to the Contract or any other contract with the Employer, or if any of the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if the Contractor shall have come to any agreement with another Contractor or number of Contractors whereby an agreed quotation or estimate shall be tendered to the Employer by one or more Contractors."

- 68. Clause 75:** (1) A new Clause 75 with a Sub-Clause 75.1, with the marginal heading "Termination of Contract for Employer's Convenience" is added reading as follows:

"Sub-Clause 75.1. The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving sixty days' prior notice to the Contractor, with a copy to the Engineer."

- (2) A new Sub-Clause 75.2 is added reading as follows:

"Sub-Clause 75.2. In the event of such termination the Contractor:

- (i) shall proceed as provided in Clause 65.7 of Part I of the General Conditions;
and
- (ii) shall be paid by the Employer as provided in Clause 65.8 of Part I of the General Conditions, as amended by these conditions."

69. Clause 76: A new Clause 76 with a Sub-Clause numbered 76.1, with the marginal heading "Joint and Several Liability" is added reading as follows:

"Sub-Clause 76.1. If the Contractor is a joint venture of two or more persons, all such persons shall be jointly 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 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."

70 Clause 77: A new Clause 77 with a Sub-Clause numbered 77.1, with the marginal heading "Details to be Confidential" is added reading as follows:

"Sub-Clause 77.1. The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and the Contractor 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."

ANNEX I
FORM OF PERFORMANCE SECURITY
(BANK GUARANTEE)

Date:

To: *[name and address of Employer]*

Whereas, with a view to signature of a formal contract with
[name of Contractor] , whose principal place of business is at
.....*[address of Contractor]* , (hereinafter called the Contractor), you
have accepted a tender by the Contractor for the construction and completion of
.....*[state designation or short description of Works]* (hereinafter
called the Works) and the remedying of any defects therein;

Whereas, by virtue of the acceptance of his tender, the Contractor is obligated to
provide a guarantee by a bank acceptable to you of the good performance of his
obligations under the contract made or to be made hereafter for the execution of the Works,
(said contract hereinafter referred to as the Contract); and

Whereas, we have agreed to furnish such bank guarantee.

NOW, THEREFORE, in consideration of your acceptance of this bank guarantee
in fulfillment of the Contractor's obligation to provide such guarantee, we,
..... *[bank]*, waiving all objections and defences on the basis of the Contract,
hereby irrevocably and unconditionally undertake to pay to you up to the maximum
amount of*[amount of*
Guarantee in figures and words], without any demur to such payment, argument or delay,
upon your first written demand stating that the Contractor failed to perform any of his
obligations under the Contract, such statement by you being deemed as conclusive for the
purpose of this bank guarantee. In case of any claim by you under this bank guarantee,
payment shall be made by us in the types and proportions of the currencies in which, as
stated by you in your demand, the Contract Price is payable.

We hereby specifically waive any right we may have to require that you demand
payment by the Contractor before demanding payment under this bank guarantee.

We further agree that any forbearance or extension of time granted by you to the
Contractor or any change, addition to or modification of the Contract or of the Works to be
executed thereunder shall not in any way release us from our liability under this bank
guarantee, and we hereby waive any right to consent to or receive notice of such
forbearance, extension of time, change, addition or modification.

This guarantee shall be governed by the laws of*[state country of*
the Employer] and the courts of that country shall have exclusive jurisdiction to

adjudicate on any dispute relating to the interpretation or application of this guarantee.

This guarantee shall be valid from the date hereof until 28 days after the issue of the Defect Liability Certificate provided for in the Contract.

Signed
*[Signature(s), as appropriate, on behalf of the
Guaranteeing Bank]*
[Seal of the Bank]

**ANNEX II
FORM OF BANK GUARANTEE FOR THE ADVANCE
PAYMENT**

Date:

To: *[name and address of Employer]*

Whereas, a contract dated (hereinafter referred to as the Contract) was entered into by you with *[insert name of the Contractor]* (hereinafter called the Contractor), whereby the Contractor undertook to execute and complete *[state designation or short description of Works]* ;

Whereas, the Contract provides for an advance payment to be made by you to the Contractor in the amount(s) of *[state currency / currencies and amount / amounts]* (hereinafter referred to as the Advance Payment) for the purpose of mobilization, provided the repayment of such advance is guaranteed by a bank acceptable to you;

Whereas, we are willing to provide the required guarantee in accordance with the request of the Contractor.

NOW, THEREFORE, in consideration of your making the Advance Payment to the Contractor against the security of this guarantee, we *[bank]*, hereby unconditionally and irrevocably guarantee, as primary obligor and not merely as surety, the payment to you, upon your first written demand, of an amount not exceeding *[state currency / currencies and amount / amounts in figures and words]* , without any objection on our part, on whatever grounds, and without requiring that you demand payment by, or proceed against the Contractor before demanding payment by us.

The amount of this guarantee shall be reduced by the amounts, if any, recovered by you by deductions from payments due to the Contractor under the Contract, and your statement of the total of such amounts, if any, shall be deemed as conclusive for the purpose of this guarantee.

We agree that any forbearance granted by you to the Contractor or any change, addition to or modification of the Contract or of the Works to be executed thereunder shall not in any way release us from our liability under this guarantee, and we hereby waive any right to consent to or receive notice of such forbearance, change, addition or modification.

No drawing may be made by you against this guarantee until we have received notice from you that the Advance Payment has been made to the Contractor. Such notice shall be deemed as conclusive for the purpose of this guarantee.

This guarantee shall be governed by the laws of *[state country of the Employer]* and the courts of that country shall have exclusive jurisdiction to adjudicate on any dispute relating to the interpretation or application of this guarantee.

This guarantee shall remain valid and in full force and effect from the date of making the Advance Payment to the Contractor by you, as such date is notified by you, until the Advance Payment is repaid in full to you by the Contractor.

Signed
*[Signature(s) , as appropriate, on behalf of the
Guaranteeing Bank]
[Seal of the Bank]*