

THE REPUBLIC OF ECUADOR

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Centro de Rehabilitación de Manabí

WATER TRANSBASIN PROJECT FOR CHONE - RORTO VIEJO RIVER BASINS

TENDER DOCUMENTS

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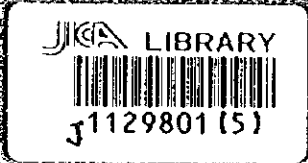
CONSTRUCTION OF CIVIL WORKS

PACKAGE II

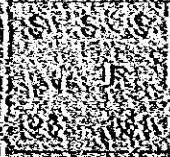
VALDE VERDE - VAINES DE ANZA TRANSBASIN

VOLUME - II

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MARCH 1996





THE REPUBLIC OF ECUADOR

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Centro de Rehabilitación de Manabi

WATER TRANSBASIN PROJECT FOR CHONE - PORTOVIEJO RIVER BASINS

TENDER DOCUMENTS  
FOR  
CONSTRUCTION OF CIVIL WORKS

PACKAGE 1

DAULE - PERIPA ~ LA ESPERANZA TRANSBASIN

VOLUME - I

- 
- CONVOKING
  - INSTRUCTIONS TO TENDERERS
  - DRAFT CONTRACT, GENERAL DISPOSITIONS AND SPECIAL CONDITIONS
  - PRINCIPLES AND CRITERIA FOR THE EVALUATION OF THE TENDERS
  - COMMITMENT, TRANSFER AND REIMBURSEMENT PROCEDURES OF OECF
  - LIST OF MINIMUM EQUIPMENT REQUIRED
- 

MARCH 1995



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REPUBLIC OF ECUADOR

OECE LOAN No. \_\_\_\_\_

CENTRO DE REHABILITACION DE MANABI

CRM

WATER TRANSBASIN PROJECT  
FOR  
CHONE-PORTOVIEJO RIVER BASINS

INTERNATIONAL TENDERING No. \_\_\_\_\_

CONSTRUCTION OF CIVIL WORKS

PACKAGE 1

DAULE-PERIPA~LA ESPERANZA TRANSBASIN

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**REPUBLICA DEL ECUADOR**

**OECD LOAN No. \_\_\_\_\_**

**CENTRO DE REHABILITACION DE MANABI**

**CRM**

**WATER TRANSBASIN PROJECT FOR CHONE-PORTOVIEJO RIVER BASINS  
INTERNATIONAL TENDERING No. \_\_\_\_\_**

**CONSTRUCTION OF CIVIL WORKS**

**PACKAGE 1**

**DAULE-PERIPA~LA ESPERANZA TRANSBASIN**

**CONVOKING**

The Contracting Committee of the Centro de Rehabilitación de Manabí, CRM, in accordance with the resolution taken in the session of \_\_\_\_\_ invites the pre-qualified firms that are listed, to present tenders in order to participate in the International Tendering No. \_\_\_\_\_, that will be executed with resources from a loan granted by the OVERSEAS ECONOMIC COOPERATION FUND OF JAPAN (OECD), for Construction of Civil Works, Package 1: Daule-Peripa~La Esperanza Transbasin of the Water Transbasin Project for Chone-Portoviejo River Basins.

**Package 1**

**C-1**



## 1. SCOPE OF WORKS

The Works covered in this Tendering comprises the following works:

- General Items.
- Daule-Peipa~La Esperanza Diversion Tunnel <sup>LI</sup>, 3.7 m dia., 8.3 km long and 18.0 m<sup>3</sup>/sec in flow capacity, including Conguillo inlet and Membrillo outlet.
- Conguillo Work Adit at the inlet site, about 183 m long.
- El Guasmo Work Adit at the intermediate point, about 3.4 km from the inlet, about 350 m long.
- Membrillo Work Adit at the outlet site, about 128 m long.
- Conguillo Access Road, new permanent road, about 22.6 km long.
- El Guasmo Access Road, new temporary road, about 1.6 km long.
- Membrillo Outlet Access Road, new temporary road, about 0.4 km long.

Further details of the Scope of Works are presented in the Pre-qualification Bases of the Pre-Qualification Documents and also in the Technical Specifications.

## 2. PROJECT LOCATION

The Project to be tendered, is located in the central part of Manabí province, one of the provinces in the Costa region facing to the Pacific Ocean. The Chone-Portoviejo river basins has an area of 4,871 km<sup>2</sup>, consisting of the Bahía area (Lower basin of Chone river) of 544 km<sup>2</sup>, the Chone river basin of 2,267 km<sup>2</sup> and the Portoviejo river basin of 2,060 km<sup>2</sup>.

The Daule-Peripa dam is located on the Daule river at about 15 km upstream of Pichincha and the La Esperanza dam is located on the Carrizal river at about 11 km upstream of Calceta. The diversion tunnel will connect the existing Daule-Peripa reservoir and the La Esperanza reservoir which will impound in 1996.

The Project site is accessible to the La Esperanza dam now under construction by means of paved roads and to the vicinity of the Conguillo inlet site through the future reservoir area via Membrillo by means of jeepable roads only in the dry season, but before 1996. Therefore, the permanent access roads must be constructed from Buenaventura to the Conguillo inlet site via Membrillo and Guasmo works adit site.

## 3. TENDERING REGIME

This International Tendering No. \_\_\_\_\_, since it is financed by a Credit Institution of the Government of Japan, will be in accordance with what is established in the Article 58 of the Public Contracting Law published on the Official Registry No. 501 of August 16, 1990 and to the dispositions contained in the Loan Agreement No. \_\_\_\_\_ between the OECF and the Government of the República del Ecuador, and as for matters not foreseen in the Loan Agreement, the prevailing laws of Ecuador will be applied.

<sup>LI</sup>: The hydro-mechanical works are installed by the other contractor.

#### **4. METHOD OF PAYMENT**

The payment of the tendered works will be done with charge to the funds proceeding from the loan granted to the Ecuadorian State by the OECF.

Such payments will be carried out by the method of Advance Payment, equivalent to twenty percent (20%) of the Contract value, and the balance by means of monthly invoices duly approved, subject to the accepted unit prices and work satisfactorily made.

The payments that the Contractor is entitled for the fulfillment of the Contract will be done in Japanese Yens or U.S.Dollars for the foreign currency portion and in Sucre for the local currency portion. The Tender can be stated in Sucres and Japanese Yens or U.S.Dollars. According to the nature of the expense and the respective amounts of each one, the payment will constitute as a set, the total value of the Tender. The Tenderer will have to consider that for payment purposes Japanese Yens will always be used so no price readjustment will be considered.

#### **5. GETTING THE DOCUMENTS**

The documents for the presentation of the Tender will be available for those interested in the Secretariat of the Contracting Committee of CRM, in the address indicated below, from the day \_\_\_\_\_ not reimbursable, value that will serve to cover the registration and participation rights in the Tender.

#### **6. SUBMITTAL OF TENDERS**

Each participant will have to submit a complete Tender, original and two copies, in the Secretariat of CRM's Contracting Committee till the 15:00 hours of \_\_\_\_\_ in the following address: 18 de Octubre y Sucre, Portoviejo, Provincia de Manabí. The Secretary of the Committee will confer the corresponding reception record, writing down the date and hour of submittal.

The Tenders will be presented in the Spanish language in a closed envelope with due securities of the case which will avoid knowing its content before the official opening of the envelopes, which will contain the documents up-to-date that demonstrate the technical and economic solvency requested in the Pre-Qualification Documents, as well as the Tender Bond, for an amount equivalent to two percent (2%) of the referential budget established by the institution.

#### **7. OPENING OF TENDERS**

The Contracting Committee will meet in the day and hour indicated as deadline for the submittal of the Tenders and one hour later will proceed to publicly open the envelopes containing the Tenders. The Tenderers could assist to the said session, leaving on written record in acts of what has been done.

## 8. PERIOD OF COMPLETION

The Contracting Committee will not accept Tenders with a period of completion longer than Fifty Four (54) months.

## 9. AWARDING

The Contracting Committee will resolve within the term of ten (10) days counted from the deadline date, for the Tenderers to formulate the clarifications regarding the report from the Technical Commission and will award the Contract to the Tenderer that had submitted the most convenient Tender for the national and institutional interests previous consent of OECF.

## 10. INVITED

In order to carry out this Tendering, CRM's Contracting Committee, after consent of OECF, will make an invitation to the pre-qualified firms that are listed below:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_
- (7) \_\_\_\_\_

CRM's Contracting Committee reserves the right to award the Contract, to reject any proposal or to declare the present Tender deserted in accordance with what is established in the Article 32 of the Public Contracting Law and to reject all the Tenders at any given time, prior to the awarding of the Contract, without incurring in any responsibility, regarding the Tenderer, or the Tenderers affected by this decision and without having any obligation to communicate the reason for it.

Portoviejo,

Ab. Antonio Zabala  
President  
Contracting Committee of CRM

VOLUME - I

PART - I SECTION 1

**INSTRUCTIONS TO TENDERERS**

## PART I - SECTION 1

### INSTRUCTIONS TO TENDERERS

#### I.1.1 GENERAL

The Tenderers will have to comply with all the instructions described herewith. The lack of knowledge or incorrect interpretation of these instructions does not liberate the Tenderer of the responsibility to comply. The submittal of the Tender will constitute a statement that the Tenderer has checked them and is completely familiarized having accepted and obliged to comply with all the parts of these Documents. The Contracting Committee reserves the right to reject the Tenders that do not fulfill the requirements demanded in the Documents of this Tendering.

#### I.1.2 TENDER OBJECTIVE

The works consist of the Construction of Civil Works, Package 1: Daule-Peripa-La Esperanza Transbasin, including Conguillo inlet, diversion tunnel, Membrillo outlet, work adits and access roads; and these works are divided into eight Items as indicated below:

Item 1	General Items
Item 2	Daule-Peripa-La Esperanza Diversion Tunnel
Item 3	Conguillo Work Adit
Item 4	El Guasmo Work Adit
Item 5	Membrillo Work Adit
Item 6	Conguillo Access Road
Item 7	El Guasmo Access Road
Item 8	Membrillo Outlet Access Road

#### I.1.3 TENDER DOCUMENTS

The following Documents form part of the Tendering:

- (1) Convoking
- (2) Presentation and Commitment Letter
- (3) Tender Forms
- (4) Instructions to Tenderers
- (5) Draft Contract, General Dispositions and Special Conditions
- (6) Technical Specifications

Package 1

- (7) Drawings
- (8) Estimated Value
- (9) Estimated Period of Completion for the Contract Execution
- (10) List of Minimal Equipment Required
- (11) Principles and Criteria for the Evaluation of the Tenders

These Documents and the Pre-Qualification Documents, the clarifications and/or modifications of the Tender will be complementary among themselves and any matter mentioned in one of them and not in the others, must have the same effect as if it was in all of the Tender Documents.

#### **I.1.4 TENDER**

The Tender will be the Documents presented to CRM by the Tenderer in order to state his commitment to assume the execution of the Works described and defined in the Drawings, Specifications and other Documents that accompany it, in case to be awarded with the Contract.

#### **I.1.5 LANGUAGE**

The Tender, the documents related to it and all of the correspondence, that is exchanged between the Tenderer and CRM will have to be written in Spanish language; however, it will be accepted that the technical information printed in catalogs and/or brochures, that will allow a better understanding of the Tender, be submitted in another language as long as the outstanding parts are translated to the Spanish language.

#### **I.1.6 SUBMITTAL OF TENDERS**

The Tenders, original and two simple copies, must be submitted in the Secretariat of the Contracting Committee, in Portoviejo, not later than the date and hour stipulated in the Convoking, within a sealed envelope with all due securities so to avoid knowing its content before the official opening, which will have on the outside the name of the participant with the following description:



CRM

WATER TRANSBASIN PROJECT FOR CHONE-PORTOVIEJO RIVER BASINS

INTERNATIONAL TENDERING No. \_\_\_\_\_

CONSTRUCTION OF WORKS

PACKAGE 1

DAULE PERIPA~LA ESPERANZA TRANSBASIN

18 de Octubre y Sucre, Portoviejo, Provincia de Manabí.

Tenders sent by fax, telex or mail, will not be accepted.

The Tenderers are responsible for the picking up the Tender Documents and also for the submittal of the Tender in the designated reception place.

Neither the Tenders received in another place, nor those received after the set hour for the submittal of the same will be considered, even in the case where the delay is due to factors out of the control of the Tenderer. In this case, the immediate devolution will be in order to the corresponding reason for it set on record.

The documents included in the Tender will have to be submitted in original or certified copies.

The documents will have to be submitted orderly, numbered progressively each and all of the pages, in order to avoid loss or confusion of the same. All of the pages of the Tender must be signed by the Tenderer or his Legal Representative. A content index will have to be included in the envelope.

The Secretary of CRM's Contracting Committee, will issue receipts for the reception of each Tender and will write down, on the receipts as well as on the Tender envelopes, the numeric order, date and hour of reception.

**I.1.7 TENDER CONTENT**

The sole envelope will contain the following documents:

- (1) Presentation and Commitment Letter according to Form No. 1 in Volume-II of the Tender Documents.

Package 1

- (2) State Comptroller's Office Certificate, regarding contracts celebrated and fulfilled by the Tenderer with Ecuadorian State or Public Sector Entities.
- (3) Financial condition statements and outcome of the last fiscal year, duly legalized by the accountant and the Tenderer or Legal Representative, according to each case; and, notification of the main variation occurred between the balance sheets and the one before the last month prior to the presentation of the Tender, that could affect the financial situation of the Tenderer, which must be duly legalized by the parties mentioned before.

In case that there are no significant variations, an affidavit in such sense will be submitted, legalized by the accountant and the Tenderer or his Legal Representative, according to what the case may be.

- (4) Certificate of legal existence and of complying with obligations, issued by the Company's Superintendence or by the respective entity in control, for the case of juridical persons constituted in Ecuador, or by the Consul of Ecuador, based in the statement of the competing authority from the country where the foreign Tenderer has his main domicile, regarding the legal existence and the capacity of it for contracting in Ecuador.
- (5) For the case of juridical person, nomination of the Legal Representative or power of attorney nominating the empowered person in Ecuador, duly legalized and inscribed and with validity date on the date of the Tender presentation.

The matters requested in the Items (3), (4) and (5), will be presented in the event that the Pre-Qualification Documents are not updated or expired.

For an Association, additionally the Association Contract or the Commitment Letter will have to be presented, which will contain:

- (a) Name, nationality and domicile of each firm.
- (b) Social object of the Association.
- (c) Duration of the Association, which can not be less than the period of completion of the Works, up to the final certificate date, inclusive.
- (d) Election of the Common Attorney of the Association.
- (e) Determination of the rights, obligations and responsibilities of each one of the companies that form the Association, documents subscribed by the Representative of each one of the firms composing the Association.

- (6) Information regarding lawsuits, administratives, tributaries and/or contract liquidation, accompanied by a certified copy of the executorial sentence if any or of the respective final resolution.
- (7) The Tender in detailed Forms, No. 6-A and No. 6-B, according to Volume-II of the Tender Documents.
- (8) Tender Bond in accordance with Form No. 2 in Volume-II of the Tender Documents.

The original of the Tender Bond will be attached so as to assure the Contract celebration, two percent (2%) of the estimated value by the Institution, which will be unconditional, and irrevocable and payable upon demand, this Bond must be submitted in the same currency and percentage registered as the value estimated by CRM.

The Tenderer could submit bonds for any of the Items a, b, c, d and e of the Article 77 of the Public Contracting Law, complying with what is stipulated in the Article 79 of said Law.

The Bonds must have a validity period of thirty (30) days after the Tender validity. In special circumstances, before the expiration date of the bond, the contracting entity could request by writing or by cable, that the validity period of the Bond be extended. The Tenderer will have the option to reject such request, and the Bond will not be executed by not doing so. The Tenderer that accepts the request of extension will not be able to modify his Tender, but will extend the validity period of the Bond in the manner requested.

- (9) Valued Schedule and usage schedules for personnel and equipment according to Form No. 3 in Volume-II of the Tender Documents.
- (10) Breakdown of Unit Prices for each one of the work items, according to Form No. 4 in Volume-II of the Tender Documents.
- (11) List of Referential Basic Prices, Forms No. 7-A to No. 7-E, in Volume-II of the Tender Documents.
- (12) Tenderer's requirements, regarding the Camp Area and Temporary Installations in Form No. 5 in Volume-II of the Tender Documents.
- (13) Equipment List and Rental Rates according to Form No. 8 in Volume-II of the Tender Documents.
- (14) Catalogs, designs, drawings, manuals and other technical information that would allow to know a bit better and to adequately evaluate each Tender.
- (15) Equipment to be used in the Work Fronts according to Form No. 10 in Volume-II of the Tender Documents.

Package 1

(16) List of Sub-contractors that participate in the Contract according to Form No. 11 in Volume-II of the Tender Documents.

(17) Descriptive memory of the methodology of the work proposed.

Besides, the Certificate of legal existence and obligations fulfillment must be authenticated and/or legalized by a diplomatic agent or Consul of Ecuador nearest to the domicile of the foreign Tenderer.

### **I.1.8 TENDER FORMS**

The forms utilized in the Tender must be completely filled out by typewriter or written in ink, with clear and legible lettering, in the manner prescribed. All the signatures or rubrics will be made by ink.

The part of the forms that are not used by the Tenderer to supply information, must be filled with a non continuous line or other appropriate signs.

On the Forms No. 6-A and No. 6-B that contain the Bill of Quantities are an estimate and have been presented as a parameter for comparison of the Tenders; therefore, will not be interpreted as express manifestation or tangible that the real quantities to be executed will have to correspond to such estimate quantities. Neither readjustments will be made on the unit prices indicated in the Bill of Quantities, by reason or increment or decrement of the real quantity of Work in relation to the estimate quantities.

Besides this, all the forms where the Tenderer is requested to submit information, must be attended and incorporated to the Tender with minimum detail described as follows; on the contrary, the Tenders that do not comply with this requirement will not be considered.

The Form No. 6-A; Summary of Bill of Quantities will have to be completed.

#### **(1) Salaries and Costs**

List of wages, salaries and prices of materials that would be utilized in getting the unit prices in the Bill of Quantities presented in the Tender Form. Besides, the coefficients utilized for calculation of social benefits and general expenses in accordance with Form No. 7.

The salary of the laborers, mechanics and other workers to be employed for the execution of this Contract will not be lower than the minimum salary established by Law.

#### **(2) Rental Equipment Cost**

The price quoting for the corresponding methodology of hourly, daily, weekly and monthly rates for the rental of the construction equipment units, that are expected to have in the work

site for the execution of the Works. Rates that will be used in the carrying out of the works at cost plus percentage when there is a call for it.

**(3) Methodology**

The Tenderer must present a descriptive memory of the Proposed Work Methodology, with the corresponding graphics and drawings.

**(4) Organization Chart**

A Personnel Organization Chart, including up to foreman level, that the Tenderer foresees to use in the execution of the Works.

**(5) Labor Camps**

The Tenderer will present a detailed plan of the labor camps that will be required by him so as to fulfill his commitment in the construction, including location, preliminary architectural feature, extension of the land required and general characteristics of the buildings to be utilized in accordance with Form No. 5.

**(6) Graphic Program (Bars-Chart Diagram)**

The Tenderer, without space limiting, must present the works programming utilizing the CPM and/or PERT methods and will be summarized in a Gantt diagram where it will show, in months, the time estimate necessary to carry out the tasks of installation and execution of each one of the activities to be executed within this Contract and in agreement with the Valued Schedule.

**(7) Personnel Utilization**

Detailed schedules of the utilization of the superior personnel and fill in Forms No. 9, No. 9-A, No. 9-B and No. 9-C.

**(8) Construction Equipment**

The distribution and utilization manner of the construction equipment that are proposed to be used in the work fronts, so as to execute the works of the Contract, including a program that would indicate the work time and characteristics of the units that will be utilized, in accordance with Form No. 10.

**(9) Breakdown of Unit Price**

The Tenderer, according to Item (10) of Clause I.1.7; must present the Breakdown of Unit Price for each one of the work items of his Tender, in its components: equipment, material, labor and indirect costs in accordance with Form No. 4.

#### **(10) Sub-Contractors Program**

The Tenderer must provide the information required in Form No. 11 regarding the Sub-contractors that will participate in the execution of the Project.

#### **I.1.9 VALUE OF THE TENDER**

The value of the Tender will be the total price quoted, by separately, in Sucres and foreign currency by the Tenderer, so as to execute the work quantities estimated by CRM, at the unit prices and lump sum prices tendered in the Tender Forms.

The value of the Tender must cover all the expenses demanded by the execution of the Contract, according to the estimated Bill of Quantities.

The unit prices or lump sum prices will serve to pay the actual quantities of works satisfactorily executed by him according to the Drawings and Technical Specifications of CRM. It is established that the said prices will include all the execution costs of the works, including those works denominated as administrative and indirect and the utilities or remuneration of the Contractor. The unit prices and lump sum prices must indicate, for each one of the items of work, the proposed value in Sucres so as to cover the corresponding local expenses, and the part in foreign currency to cover the costs of the imported good and services, that the Tenderer must pay directly in such currency.

In case that product of unit price of one item by the computation of such item, is not equal to the total quoted price, the unit price will be considered as correct and that the product of the unit price by the amount will be the total price proposed. If the addition of the quoted total prices for each item is not equal to the total value, the value adopted for it will be the total that results when adding the total prices for each item, that CRM will evaluate for that effect.

#### **I.1.10 VALIDITY PERIOD OF THE TENDER**

The value of the Tender will be valid for a period of one hundred and eighty (180) days counted from the Tender submittal date as established in the Convoking of this Tendering. The Tender whose validity period is less than the one required, will be rejected by the Committee, since it does not adjust itself to the Tender Documents.

In exceptional circumstances, the Committee could request that the Tenderers extend the validity period of their Tenders.

This request and the answers, will be done by writing, fax or telex. The Tenderer can say no to this request, the Tender Bond will not be cashed if he says no.

#### **I.1.11 EXECUTION TERM OF THE WORKS**

The period of completion to execute the Works will not be longer than fifty Four (54) calendar months starting from the date of the Commencement Order, provided that the

Package 1

Contractor had received the advance payment which will be delivered within 60 days following the signing of the Contract, as long as the corresponding Bond is presented to the satisfaction of CRM.

#### **I.1.12 METHOD OF PAYMENT**

The works object of this Tendering will be paid in foreign currency (Japanese Yens or U.S. Dollars), according to the unit prices and lump sum prices set proposed and by means of approved monthly statements, and in accordance with the procedures established for that effect, by actual works executed satisfactorily using for the Suces portion, the exchange rate in effect on the day of the Tender submittal.

Therefore, no price readjustment will be made in any case as established in the Article 95 of the Public Contracting Law.

These payments will be carried out as indicated in Clause II.1.5 of the Draft Contract.

#### **I.1.13 TENDER WITHDRAWAL**

Any Tenderer could withdraw his Tender, notifying by writing to the Contracting Committee before the hour and date established as the deadline to receive the Tenders. From that date and hour, no Tenderer can withdraw his Tender, during the Tender validity period.

#### **I.1.14 CONSULTATIONS, CLARIFICATIONS AND INTERPRETATIONS**

All consultations of the Tenderes must be requested in writing to the Contracting Committee, at the latest by the middle of the period provided for the Tender submittal. Neither individual clarification or interpretation will be given to any Tenderer regarding any part of the Tender Documents, nor regarding the correction or clarification of any apparent ambiguity, inconsistency, discrepancy or possible error.

All the interpretations or clarifications of the Contracting Committee, will be considered as scope of the Tender Documents and will be put to knowledge of all the interested parties, by sending them to their respective domiciles with a maximum period of up to two thirds of the indicated term for the Tender submittal.

Only the clarifications or interpretations given in the indicated manner by the Contracting Committee will be considered as official as the Tenderers are warned that there is no other authorized source to provide the information related to the Tendering or to state explanations or interpretations regarding the text of the same.

The consultations and their answers will not be considered cause to extend the Tender submittal term.

#### **I.1.15 VISIT TO THE PROJECT SITE**

The Tenderer will have to inspect the Project Site and its surroundings: so as to verify by himself the natural conditions of the Site, geotechnical conditions as well as hydrologic and climatic conditions; the quality and nature of the materials necessary to execute the Works; the availability of labor; access roads to the work sites; housing that could be required; and, in general, he will have to get by his own means all the information necessary to evaluate all the factors that could influence in his Tender.

The omission to visit the works site or the negligence to take the necessary measures to adequately verify the work nature and the general and local conditions will not exempt the Tenderer from his responsibility to duly evaluate the difficulties or the execution cost of the works and, besides, this can not be bases to later claims of any sort.

CRM will not be responsible for any expenditure made by the Tender. Under no circumstances trips, reconnaissances or any other preparatory expenses will be reimbursed; it does not matter the manner how the Tender will be carried out or its outcome.

#### **I.1.16 INTEGRITY OF THE TENDER**

The Tender must indefectibly include all the documents and forms requested in the Tender Documents and also must attach the communications made during the tender submittal process. It is understood that the Tenderer has verified on his own the accuracy and sufficiency of the Tender, in particular, the established values and prices that will cover all the obligations that correspond to him within the Contract and all the expenses necessary to adequately finish and commissioning of the Works, according to the Drawings and Technical Specifications of this Tendering.

#### **I.1.17 ALTERATIONS OF THE TENDERING CONDITIONS**

The Tenders that include exceptions in any part of these Documents, that in some form are conditioning or that contain items not requested or conditions that are not in accordance with the existing laws or changes to the Tender not specifically allowed in the Tender Documents, will be rejected since they are not prepared in accordance to what is requested.

#### **I.1.18 TENDER SIGNING**

The Tender will be subscribed, by the Legal Representative of the Tenderer.

#### **I.1.19 MODIFICATIONS TO THE TENDERS**

The modifications to the Tenders already submitted will be considered, only if they are received before the date and hour established as the deadline for reception of the Tenders. These modifications will be made in writing and will be signed and submitted following the norms stipulated for the submittal of the original Tender.



### **I.1.20 OPENING OF TENDERS**

The Contracting Committee will proceed to open the envelopes that contain the Tenders on the day and at the hour indicated in the Convoking, the pre-qualified Tenderers could attend to this session and will be read; the main data of the Tenders, such as: name of the Tenderer, country of origin, value of the Tender, Tender Bond, period of completion and an act will be made that will certify what has been carried out during the opening of the envelopes.

The Secretary of the Contracting Committee, jointly with one of the delegated members for that effect, will sign all and each one of the documents that form part of the Tenders.

### **I.1.21 TENDER EVALUATION**

The Contracting Committee will assign the study of the submitted Tenders to the Technical Commission established by such Committee. Such Commission, within the term of ten (10) days counted from the date of the opening of the envelopes and under its responsibility, will elaborate comparative charts of the submitted Tenders, in a global manner as well as a detailed manner with the unit prices that have relation with the Tender cost and will present a detailed Technical Report with the observations that would allow the Committee to have availability to the necessary information to award the Contract. The rate (selling rate) of the intervention market of the Banco Central prevailing on the day of the reception of the Tenders will be used to for effects of calculations for elaboration and comparisons of the Tenders. The Technical Commission will consider the aspects that are provided in Part III, Principles and Criteria for the Evaluation of the Tenders, in Volume-I of the Tender Documents, having to comply what is provided in the Articles 27 and 28 of the Public Contracting Law and Articles 28, 38 and 40 of its General Regulations.

For effects of evaluation of the Tenders, the Technical Commission will consider only those values that are in it, without making projections due to concept of price readjustment.

The Contracting Committee in accordance with the Law could request clarifications of documents that would prove what has been declared in the Tenders to any of the Tenderers; who in any case could not modify or expand the content of the Tender or unit or total prices.

### **I.1.22 CAUSES FOR REJECTION OF A TENDER**

The Tenders, will be rejected fundamentally by:

- (1) Not fulfilling the demands determined in the Tender Documents.
- (2) Presenting of exceptions from the Technical Specifications.
- (3) The validity period of the Tender is less than 180 days or the execution period of the works is larger than 54 months.

- (4) No submittal of the Tender Bond or if this Bond does not satisfy the demands established in the Tender Documents.

#### **I.1.23 Awarding of the Contract**

The Contracting Committee will decide regarding the Tendering within the term of ten (10) days counted from the expiration date for the Tenderers to formulate the clarifications regarding the Technical Commission report and will award the Contract to the Tenderer whose Tender is evaluated as the most convenient to the national and institutional interests, with previous consent of the OECF.

#### **I.1.24 NOTICE**

The President of the Committee will notify by writing the result of the Tendering, within three (3) days counted from the date of awarding; and, he will return the corresponding bonds to the non-awarded tenders.

#### **I.1.25 VALIDITY PERIOD OF THE TENDER BOND**

The Awarded Tenderer will maintain the Tender Bond in force until the Contract signing, having to renovate it at least five (5) working days before its expiration. If it is not renovated on time, the Tender Bond will be cashed in without any other procedure.

#### **I.1.26 DECLARATION OF REJECTION OF TENDERS**

The Contracting Committee could declare the Tendering rejected in the following cases:

- (1) Due to the fact that no Tenders were presented;
- (2) For all Tenders or the only one presented having been disqualified or considered as inconvenient for the national and institutional interests;
- (3) For substantial violation of the Pre-contractual procedure; and
- (4) Whenever necessary to introduce a substantial reform, that changes the object of the Contract.

The Contracting Committee could order the re-opening of the Tendering or to convoke a new Tendering process.

### **I.1.27 BONDS**

#### **(1) Contract Performance Bond**

The Awarded Tenderer, before signing the Contract, must submit in favor of CRM and to the satisfaction of it a bond of five percent (5%) of the Contract value, so as to assure the performance of the Contract and to assure of the obligations related with the Contract that he may get in favor of third parties. This document could be issued, by a bank, as well as a financial entity or insurer from Ecuador or directly by a foreign bank, financial entity or insurer acceptable to CRM, as long as it is backed up by a national entity.

#### **(2) Advance Payment Bond**

Previously to the payment of the advance payments stipulated in Clause II.1.5 of the Draft Contract, the Contractor will have to present a bond acceptable to CRM, for the total value of the Advance Payment, which will be reduced in the same proportion to the amortization by itself or by the works that are temporarily submitted.

#### **(3) Fund Bond**

So to assure duly execution and good quality of the materials, besides the bonds determined before, CRM will retain five percent (5%) of the amount of each statement before discounts, and will be deposited in the name of the Contractor in the Banco Ecuatoriano de la Vivienda (BEV) in a Special Account, in accordance with the regulations issued for such effect by the Monetary Board.

This retention will be made in the currencies in which the payment was made and the refund will be made by the BEV in the same currencies, in accordance with the Article 67 of the Public Contracting Law.

### **I.1.28 BONDS REFUND**

Bonds refund will be done in accordance with the Article 83 of the Public Contracting Law.

### **I.1.29 CONTRACT SUBSCRIPTION**

Once the requirements of the Law are fulfilled with the consent of the OECF and specially the previous reports determined in the Article 65 of the Public Contracting Law, the Contract subscription will take place. The Contract will have to be awarded by Public Deed within the term of twenty (20) days counted from the date when the term expires for issuing the due reports. In case that the Contract is not celebrated due to the successful Tenderer's fault, CRM will null the awarding, cash in the Tender Bond and proceed, previous consultation with the OECF, to award the Contract to the Tenderer whose Tender is evaluated as the lowest after the null one or will reopen the Tendering.

The successful Tenderer by whose fault the Contract is not celebrated will be sanctioned according to the Article 60 Item b. of the Public Contracting Law.

The parties will act according to the provisions stipulated in the Article 67 of said Law.

#### **I.1.30 PROHIBITION TO TRANSFER THE CONTRACT AND AWARDING**

Regarding what is established in the Article 70 of the Public Contracting Law and the Article 93 of the Public Contracting Law Regulation, the Contractor can neither yield, to any title, assign nor transfer the Contract, totally or any part of this Contract or the rights and actions regarding himself. Neither a person that forms part of an Association can yield his rights in favor of the other members of such Association or to third parties.

The Awarding of the Contract neither is susceptible of cession. The awarded that pretends to yield his rights and does not celebrates the Contract will be considered as unable person to which the Item b. of the Article 60 of the said Law will be applied.

#### **I.1.31 KNOWLEDGE AND SUBJECTION TO ECUADORIAN LAWS**

The Contractor states that he knows and express his knowledge regarding the Labor Law, Public Contracting Law, Social Security Law, Law of Professional Exercise of Civil-Engineering and other Laws and Regulations prevailing in the Republic of Ecuador, that could influence in the correct application of the Contract or determine future responsibilities of the Contractor. These laws are considered incorporated to the Tender Documents and to the Contract in all that may be applied.

#### **I.1.32 UNQUALIFIED**

Those people that are found incurring in the prohibitions of the Articles 60 and 61 of the Public Contracting Law, can not participate in this Tendering.

#### **I.1.33 RETENTIONS**

The Contractor, as established in the Articles 117 and 118 of the Public Contracting Law, will contribute with the equivalent to one percent (1%) of his main Contract and complementary contracts if any, to aid the functioning of the State General Comptroller's Office, the State General Attorney Office and National Council of Science and Technology and 1% for the financing of the category chart table of the Civil Engineers. Additionally, he will contribute, with the equivalent to one percent (1%) of the Readjustment price, which will be distributed among the National Institute of Statistics and Census INEC, and the three entities indicated before.

CRM, will retain the service rate of 0.5% in favor of CEBCA, in accordance with the resolutions of the Decree Number 2298 of December 13th. 1983.

### **I.1.34 ADDITIONAL INFORMATION**

- (1) The Tender Documents can be presented using the International Unit System, except in those cases expressly indicated in the documents. The Metric System will continue to be used in all acts and documents that are produced during the execution of the Contract.
- (2) The Tenderer will have to clarify that he knows and becomes subject to all the laws and stipulations prevailing in Ecuador, particularly regarding the Work Code that regulates the maximum legal work day, the minimum remuneration for the laborers and the dispositions of Professional Defense and Social Security. Besides this the Tenderer must know that in accordance with the Ecuadorian legislation, it is considered null all that which infringes the Public Right.

### **I.1.35 TERMS DEFINITIONS**

Wherever the following terms are used in the Tender Documents, its intentions and meaning will be interpreted in the following manner:

**ASSOCIATION:** Participant that is constituted by two firms or more.

**AWARDED TENDERER:** The successful Tenderer who has been favored with the awarding of the Contract.

**APPROVED:** Approved means the acceptance in writing, inclusive the confirmation written after a prior verbal approval.

**CRM:** The Manabí Rehabilitation Center of the Government of the Republic of Ecuador.

**CONTRACTING COMMITTEE:** It is constituted by CRM, in charge of approval of the Tender Documents and procedures, with the object to pre-qualify, qualify and award the Contract for civil works.

**TECHNICAL COMMISSION:** Technical Group designated by CRM's Contracting Committee for analysis of the Tenders.

**CONTRACTOR:** The Firm or Association of Firms that conclude the Contract with CRM.

**CONTRACT:** It is the agreement in writing on Public Deed between CRM and the Contractor, establishing the respective obligations of the contracting parties. The Forms included or mentioned in the Tenders will form part of the Contract and also all the other documents issued to provide what is necessary in order to complete the Works in an acceptable manner.

**COMPTROLLER'S OFFICE:** It is the State General Comptroller's Office.

**VALUED SCHEDULE:** It is the document elaborated by the Contractor, approved by CRM, in which it is established the detail of the execution term of the works.

**CALENDAR DAYS:** Every consecutive day including Saturdays, Sundays and Holidays.

**WORK DAYS:** Those are the calendar days, without Saturdays and Sundays and the Holidays approved by Ecuadorian Law.

**CONTRACT DOCUMENT:** The Documents that the Contract establishes as part of the same.

**TENDER DOCUMENTS:** Pre-contractual Documents that CRM delivers to the Tenderers for the preparation of the Tenders.

**GENERAL MANAGER:** Legal Representative of CRM.

**PROJECT DIRECTOR:** Officer of CRM designated for the administration of the Contract.

**CONTRACTING ENTITY:** It is the CENTRO DE REHABILITACION DE MANABI (CRM).

**PLANT EQUIPMENT:** They are all the machinery, tools, implements and spare parts required for the acceptable construction and completion of the work.

**TECHNICAL SPECIFICATIONS:** All the instructions and technical requirements that rule the execution of the Works.

**TEST:** The laboratory or in situ process, mechanical, physical and/or chemical of comparison, characteristics of the materials utilized for the execution of the Works and the completed Works.

**FUNDAMENTAL DATES:** Fundamental dates are the calendar dates that are in the Execution Schedule that indicate the commencement and completion of activities and the commencement and completion of the Contract.

**SUPERVISION:** The organization or person assigned by CRM of which, in representation, audits and supervises the execution of the Project.

**SUPERVISOR:** The technical personnel assigned for the supervision so as to execute the technical functions of auditing and supervision of the Works in order to assure the proper execution.

**RESIDENT SUPERVISOR:** The Civil Engineer or his Assistant who will represent the Supervisor in the work fronts.

**FUND BOND:** The five percent (5%) retention of the total amount of the monthly statements, including the readjustment value, which will be done by CRM in fulfillment with what is established in the Article 76 of the Public Contracting Law.

**ACTS OF GOD:** It will be understood as it is defined in the Article 30 of the Ecuadorian Civil Code "The contingency that is not possible to resist".

**ADVANCE PAYMENT BOND:** The guaranty accepted by CRM that responds for twenty percent (20%) of the Contract amount, received by the Contractor, for this concept.

**PERFORMANCE BOND:** The guaranty given by the Contractor as bond for the fulfillment of the Contract before its subscription, equivalent to five percent (5%) of the total amount of the Contract.

**TENDER BOND:** The guaranty given by the Tenderer for an amount of two percent (2%) of the referential budget given by CRM, in order to assume the obligation to subscribe the Contract in the event to be successful.

**IESS:** Ecuadorian Institute of Social Security.

**ENGINEER:** The Supervision.

**TEMPORARY INSTALLATIONS:** These comprise the sites, camps, sanitary, electric and telephone facilities and installations of any other order that are used for the construction, assembling and conservation of the permanent installations until his Total Provisional Certificate.

**LABOR LAW:** The Work Code of the Republic of Ecuador and other prevailing regulations of labor protection.

**COMPANIES LAW:** The prevailing Company Law in Ecuador.

**PUBLIC CONTRACTING LAW:** The prevailing law and its reforms that sets rules of Tendering and Bidding in Ecuador.

**LAW OF PROFESSIONAL ENGINEERING EXERCISE:** Official Registry 709 dated December 26, 1974.

**LAW OF PROFESSIONAL CIVIL ENGINEERING EXERCISE:** Official Registry 590 dated September 30, 1983.

**WORKS BOOK:** It is the document where the Supervision and Contractor observations and recommendations are registered, regarding such works in construction in the different work fronts.

**ORDERS BOOK:** Document where the orders and approvals by the Supervision of the works given to the Contractor are kept on record.

**REQUESTS BOOKS:** Document where the request regarding the Contract are made, these requests are made by the Contractor to the Supervision of the Works.

**PAYMENT LINES:** The guidelines adopted for the measuring and for the payment of work quantities in excavation, landfill, concrete, etc.

**MATERIALS AND PERMANENT EQUIPMENT:** The materials that are incorporated in the Works and the equipment to be installed in the permanent structures of the Project.

**MOUNTING:** All the installation phases of the equipment object of this Contract, till its reception.

**WORKS:** The group of work that comprises the Construction of Civil Works, Package 1: Daule-Peripa~La Esperanza Transbasin of this Project.

**OECE:** The Overseas Economic Cooperation Fund of Japan.

**TEMPORARY WORKS:** These are the constructions of temporary nature of any type that may be and that are required for the execution, completion and maintenance of the Works object of this Contract.

**TENDERER:** Read as Proposer.

**ORIGIN:** Country of origin of the participant.

**PARTICIPANT:** Firms or Associations of Firms pre-qualified that intervene in the Tendering.

**MONTHLY STATEMENT:** The monthly statements presented to CRM by the Contractor for payment of work executed during one month.

**DRAWINGS:** These are the Tender, Workshop and Construction Drawings as well as any modification to them that have been approved in writing by the Supervision; and all those drawings that in successive dates had been issued and/or approved by the Supervision.

**TERMS:** The duration time of construction of the Works, counting from the date when the Commencement Order is issued till the date when the Works as a whole, object of this Contract, must be completed.

**ORIGINAL PRICES:** Listed prices in the Bill of Quantities without readjustments.



**WORK PROCEDURE:** It consists of the operative methods, for execution of the Works, adopted by the Contractor in order to comply with the Technical Specifications that rule the Contract and the Valued Execution Schedule.

**ATTORNEY'S OFFICE:** The State Attorney General's Office (Procuraduría General del Estado).

**OWNER:** CRM.

**PROPOSER:** Firm or Association of Firms that was previously pre-qualified by CRM to intervene in this Tendering and that has presented his Tender.

**TENDER:** It is the written documentation, prepared and presented by the Tenderer, so as to execute all the works and provide all the services contained in the Drawings and Technical Specifications of this Tendering.

**ACCEPTABLE TENDER:** The Tender that according to CRM's criteria complies with all the terms and conditions of the documents.

**PROJECT:** Water Transbasin Project for Chone-Portoviejo River Basins.

**PROVISIONAL RECEPTION:** The total submittal of the works and supplies upon completion of the Works.

**FINAL RECEPTION:** That which will be done once twelve (12) months have passed from the date when the Total Provisional Reception Certificate is subscribed.

**CONTRACTOR'S LEGAL REPRESENTATIVE:** He is the Executive of the Contractor, with domicile in the city of Portoviejo, vested of all power for the execution of the Project and for responding in regard the contractual relationship borne from the Contract.

**RETENTION:** The deduction that CRM makes in all payments made to the Contractor, with lawful purposes.

**WORKS SITE:** Place or space where all works regarding the Works have to be carried out or executed, including the temporary works and surrounding or nearby places, to comply with the purposes related with the object of the Contract, required by the Contractor.

**SATISFACTORY:** Convenient or acceptable to the criteria of CRM and/or the Supervision.

**SUBCONTRACTOR:** It is that person be it natural or juridical that the Contractor has placed in charge of a Work or part of the same, with previous written consent from the Supervision, consent that will not exempt the Contractor from any of his responsibilities and obligations that emanate from the Contract.

**GENERAL SUPERINTENDENCE:** Person in charge of the execution of the Works as authorized representative of the Contractor and with the corresponding responsibilities.

**BILL OF QUANTITIES:** The list of items of the Tender including the unit prices and lump sum prices for the respective work items and services specified in the Tender Documents.

VOLUME - I

PART - II SECTION 1

DRAFT CONTRACT



## PART II - SECTION I

### DRAFT CONTRACT

The Centro de Rehabilitación de Manabí, that from hereinafter will be named CRM, represented by his General Manager duly authorized by the Board of Directors, as it is on record in the Session Act dated \_\_\_\_\_ on one side and, on the other side \_\_\_\_\_ duly established in \_\_\_\_\_ that from hereinafter will be named Contractor, represented by \_\_\_\_\_ that for effects of this Contract has been constituted in Legal Representative domiciled in Ecuador, as it is on record in the enabling documents attached herewith, agree to celebrate this Contract, contained in the following Clauses:

#### II.1.1 BACKGROUND

CRM is the responsible institution for the planning, designing, execution and maintenance of the hydraulic infrastructure works in the Manabí Province.

The Government of Japan and the Government of Ecuador, agreed the financing of the Water Transbasin Project for Chone-Portoviejo River Basins, hereinafter named as the Project, in the Province of Manabí, having subscribed the note exchange in \_\_\_\_\_ . Based upon the Minutes of Discussion and Agreement of \_\_\_\_\_ , respectively, between the Overseas Economic Cooperation Fund of the Government of Japan that from hereinafter will be named the FUND, and the Ministry of Finances, the Loan Agreement Number \_\_\_\_\_ was elaborated and said Loan Agreement was signed on the \_\_\_\_\_ by means of the Executive Decree Number, \_\_\_\_\_ dated \_\_\_\_\_ , published on the Official Registry Number \_\_\_\_\_ dated \_\_\_\_\_ , The Constitutional President of the Republic of Ecuador, authorized the Finance and Public Credit Minister so that in representation of the Ecuadorian State, proceed with the subscription of the Credit Agreement and other documents derived from it with the Overseas Economic Cooperation Fund (OECE), for \_\_\_\_\_ Yens (¥. \_\_\_\_\_) for the Project.

By reformative Law No. 57 to the CRM Constituent law published in the Supplement No. 476 of the Official Registry of July 5, 1994, CRM is the executing agency of the Project.

The Contracting Committee of CRM on the days \_\_\_\_\_ , \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ 199\_ invited the constructing firms to present documents that will prove technical and economic solvency for the construction of the Civil Works, Package 1 : Daule-Peripa-La Esperanza Transbasin, of the Project. After having studied the respective documentations, the Contracting Committee proceeded to qualify the interested firms and, dated on, \_\_\_\_\_ convoked to Tendering so that the pre-qualified constructing firms present a construction tender for the Package 1 of the Project aforementioned.

Once the different tenders were received and the corresponding evaluations were made, CRM's Contracting Committee resolved that the tender of the Contractor, is the most convenient for the institutional and national interests, therefore, the Contracting Committee resolved to award him the Contract for the execution of the Package 1 of the Project works. This decision was put on record in the Act of Session of CRM's Contracting Committee that was held on \_\_\_\_\_.

A favorable report was attained from the State Comptroller's Office, by means official letter Number \_\_\_\_\_ dated on \_\_\_\_\_ of \_\_\_\_\_ 199\_\_ ; from the State Attorney General's Office, by means of an official letter Number \_\_\_\_\_ dated on \_\_\_\_\_ of \_\_\_\_\_ 199\_\_ ; from the Ministry of Finance and Public Credit by means of the official letter Number \_\_\_\_\_ dated on \_\_\_\_\_ of \_\_\_\_\_ 199\_\_ , and from the Overseas Economic Cooperation Fund (OECF) by means of an official letter Number \_\_\_\_\_ dated on \_\_\_\_\_ of \_\_\_\_\_ 199\_\_.

#### II.1.2 CONTRACTUAL DOCUMENTS

The following Documents, duly signed by the parties protocolized, form part of this Contract:

- (1) Certified Copy of the appointment letter of CRM General Manager and the take over Minute.
- (2) Certificate that proves the legal existence of the Contractor.
- (3) Appointment letter of the Legal Representative of the Contractor in Ecuador.
- (4) Certified Copy of the Awarding Minute of the Contract by CRM's Contracting Committee.
- (5) Certified Copy of the Proceeding of CRM's Directory Board in which the General Manager gets the authorization for the subscription of the Contract.
- (6) Payment receipt for contribution of one per thousand (1 0/00) of the Contract value, according with the Article 10 of the Civil Engineering Professional Exercise Law.
- (7) The General Conditions for the International Tendering No.
- (8) Commitment and Submittal Letter (Form number 1).
- (9) Bill of Quantities reviewed by CRM.
- (10) Unit and Lump Sum Prices Breakdown (Form number 4).

- (11) The Tender submitted by the Contractor.
- (12) Execution and Valued Schedule of the Works.
- (13) Detail of the Equipment to be used in the Works.
- (14) Certificate that the Legal Representative of the Contractor is registered in the Association of Civil Engineers of Ecuador, in accordance with the Engineering Professional Service Law.
- (15) The cross communications correspondence that occurred during the tender process, between CRM and the Tendered.
- (16) State General Comptroller's Office certificate regarding the fulfillment of contracts held by the Contractor with the State.
- (17) Resource existence and availability of funds certificate granted by the Finance Director of CRM.

Form part of the Contract without the necessity to be protocolized, the completion schedule of drawings of final design, and of areas, besides the Bonds required by Law.

The Contractor accepts that the intention manifested in the Contract Documents is to include all the goods, services and stipulations required for the proper execution of the contracted works. Any omission by CRM, in the details necessary for the completion of the works, neither can be interpreted as if the Contractor has to omit them nor an understood authorization for the Contractor not to execute the whole work. In such cases, the compensation or payment due to the Contractor will be made by means of the corresponding Unit Prices, if there isn't any, by means of a previous subscription of new complementary contract(s) or by means of the method of "cost plus percentage" in the terms established by the Public Contracting Law.

### **II.1.3 OBJECT OF THE CONTRACT**

The works object of this Contract and that the Contractor is obliged to construct under his own responsibility and according to the Technical Specifications, General Dispositions and Special Conditions, Drawings and other stipulations that appear in these Documents, are mentioned below.

The civil works in the Package 1 of the Project consist of construction of the Daule-Peripa-La Esperanza diversion tunnel including work adits and access roads. These works are divided into eight Items as described below:

Item	Description
1.	General Items
2.	Daule-Peripa~La Esperanza Diversion Tunnel
3.	Conguillo Work Adit
4.	El Guasmo Work Adit
5.	Membrillo Work Adit
6.	Conguillo Access Road
7.	El Guasmo Access Road
8.	Membrillo Outlet Access Road

In case of any discrepancy or inconsistency among the Contract's components, the following ruling order is established:

1. Contract
2. General Dispositions and Special Conditions
3. Technical Specifications
4. Drawings
5. Tender

Furthermore it is established that the Contractor shall be governed by figured dimensions on the Drawings. But in case such required dimensions are not shown in the figures, the Contractor shall obtain such dimensions from the Supervision.

#### II.1.4 CONTRACT VALUE

The Contract amount is the sum of: \_\_\_\_\_  
 \_\_\_\_\_ in local currency, according to the total indicated in the Tender submitted by the Contractor in the Bill of Quantities.

CRM will pay the Contractor for the works executed according to this Contract, the value that would result applying the Unit Price or the Lump Sum Price tendered in the Bill of Quantities for the quantity of work actually executed according to the Drawings and Technical Specifications and to the satisfaction of CRM:

The parties agree that this prices include the direct and indirect costs that the Contractor will have to incur for completion of the object of this Contract, plus his profit; therefore, no claims will be accepted for any additional payment. However, if the stipulations agreed upon in this document, were modified without any fault on the Contractor's side, causing suspensions, ceasing, accelerations, reduction of the work rhythm established in the Valued Schedule of Works Execution, CRM will acknowledge the corresponding payment of the cost he incurred, if any.

The Unit Prices or Lump Sum Prices set in the Bill of Quantities are understood as elaborated by the Contractor based upon the evaluated costs carried out by himself and, therefore, they are his sole and own responsibility.



## **II.1.5 METHOD OF PAYMENT**

CRM will pay the Contractor the values of the works executed in J. Yen or US Dollars in foreign currency portion and Ecuadorian Sucres in local currency portion, exchanging the amounts from Japanese Yens to US Dollars and Ecuadorian Sucres, using the prevailing exchange selling rate in the intervention market of the Banco Central on the day of the tender submittal, in accordance with the Bill of Quantities of his Tender. CRM will use for such effect the funds proceeding from the Loan Agreement granted by the OECF for this Work, in the following manner:

- (1) Submitting an Advance Payment equivalent to 20% of the Contract value.
- (2) By means of Monthly Statements per executed work, in accordance with the procedures established in Clause II.2.8 of the General Dispositions that form part of this Contract.
- (3) By means of the issuing of irrevocable Letters of Credit, non-transferable effective only for acquisition in a foreign country of goods to be incorporated permanently in the Works, also complying with all requirements determined by the Law for such effect.

For the payment of the values aforementioned, in accordance with the Loan Agreement the following methods shall be applied:

<u>PROJECT COST</u>	<u>ECUADORIAN CONTRACTOR</u>	<u>FOREIGN CONTRACTOR</u>
<b>FOREIGN CURRENCY PORTION</b>		
DISBURSEMENT METHOD	REIMBURSEMENT PROCEDURE	COMMITMENT PROCEDURE
CURRENCY ON INVOICES (CONTRACTOR REQUESTS)	YENS OR DOLLARS	YENS OR DOLLARS
CURRENCY IN WHICH THE REIMBURSEMENT IS REQUESTED by CRM	DOLLARS	YENS OR DOLLARS
CURRENCY IN WHICH PAYMENTS ARE MADE	DOLLARS	YENS OR DOLLARS
<b>LOCAL CURRENCY PORTION</b>		
DISBURSEMENT METHOD	REIMBURSEMENT PROCEDURE	REIMBURSEMENT PROCEDURE
CURRENCY ON INVOICES (CONTRACTOR REQUESTS)	SUCRES	SUCRES
CURRENCY IN WHICH THE REIMBURSEMENT IS REQUESTED by CRM	DOLLARS	DOLLARS
CURRENCY IN WHICH PAYMENTS ARE MADE	SUCRES	SUCRES

Larger details are included in Part IV, which is the payment method described in the Loan Agreement.

## II.1.6 PERIOD OF COMPLETION

The Contractor agrees upon to execute the total amount of works contained in the Drawings and Specifications of the Tendering object of this Contract within the maximum term of 54 months stipulated in the Execution Schedule of the Works, presented with his tender and approved by CRM. This execution period will be incremented with the extensions that according to the Contract may take place, in accordance with the stipulations of this Contract.

The total period of completion will begin from the date that the Contract subscription, provided that the Contractor had received the advance payment and also that the Contractor had received the areas required in accordance with the Sub-Clause II.2.7.1 of the General Dispositions included in this Contract.

CRM could extend the period of completion established in the following cases as long as the Contractor request by writing and with the justification of the motives for doing so, within the fifteen (15) following days of the fact, which is the reason for the request:

- (1) For causes beyond his control or Acts of God duly justified by the Contractor and verified by CRM, in accordance with what is established in the pertaining Ecuadorian Laws and what is indicated in Clause II.2.9 of the General Dispositions.
- (2) When CRM orders the amplifying, modification or complementarity of the Works and/or the execution of additional or complementary works and/or when there is a larger volume of Work that affects the critical route. In these cases any term extension be it partial or total resulting from the execution of the additional or complementary works to what was agreed will be calculated, once the effect is determined over the critical route of the Project in the schedule CPM, in a proportional manner to the larger Work volume in respect to the total or partial term originally provided in the Execution Schedule of the Woks.
- (3) Due to the delay in the payments that could cause the total or partial paralization or decrease in the work rhythm , or by other suspensions, paralizaciones and/or decreasing in the work rhythm which can not be blamed on the Contractor in the Execution Schedule of the Works ordered by CRM and/or Supervision.
- (4) Due to delay in the submittal to the Contractor of the work areas required according to what is stipulated in Sub-Clause II.2.7.1 of the General Dispositions.

As consequence of what has been established in the paragraphs above, the Contractor will elaborate for approval of CRM a new "Execution Schedule" and the corresponding "Valued Execution Schedule" that, once subscribed by the parties, will substitute the ones before and will have the same contractual value as the Original Schedules which will have to be protocolized. CRM will have a term of thirty (30) calendar days to approve it or reject it, according to the parameters contained in this Contract, the Schedules presented will have to indicate in concrete the reasons of the rejection. In case of rejection, CRM will have a new term of ten (10) days to revise and approve the Schedules that had been presented attending the observations.

As long as the procedures are not fulfilled for the approval of the modified Schedules presented by the Contractor, these will become effective temporarily for all effects of this Contract.

#### **II.1.7 FINES**

For each calendar day of delay in the completion of the contracted works, regarding the indicated term indicated in Clause II.1.6, including their extensions, CRM will apply a fine for an amount equal to one third per thousand of the total original Contract amount without to exceed five percent (5 %) of the Contract total amount, without to exceed five percent (5 %) of the Contract total amount.

For delays in the fulfillment of the monthly production in the rate of 80 % of the scheduled activities to be executed in that period and that have not been completed 100 % in the prior month as stated in the prevailing Valued Execution Schedule for the work, CRM will apply a fine of zero point zero three per thousand 0.03 ‰ of the works quantities not executed in the corresponding month. Other fines are included in the General Dispositions, clauses II. 2.102, II. 2.10.3, II. 2.10.4 and II. 2.10.5.

The fines will not be refunded under any circumstance.

If the total amount of fines surpasses the performance bond of the Contract, CRM will be able to cancel the Contract in accordance with what is established in Clause II.1.26 of the Draft Contract and to what is established in the Articles 109 and 110 of the Public Contracting Law.

## **II.1.8 CONTRACT BONDS**

### **(1) Performance Bond**

In order to assure the performance of the Contract and to answer for the obligations to third parties regarding this Contract, the Contractor shall submit to CRM before the Contract signing a performance bond, equivalent to five percent (5%) of the Contract value in each currency. This bond will be refunded to the Contractor at the moment of the final reception.

### **(2) Advance Payment Bond**

Before the advance payments established in the Clause II.1.5 of the Draft Contract are done, the Contractor will have to submit a bond acceptable to CRM, for an equal amount of the advance payments.

This bond will be reduced in a proportional manner up to the point where the total amortization of the advance payment is carried out, at the same rate that the works are being executed and the corresponding statements are approved. For the Letters of Credit, they must submit to what is established in the Article 74 of the Public Contracting Law.

The advance payment that CRM will give the Contractor within the sixty (60) days after having received to satisfaction, the corresponding bonds, will be amortized by means of monthly deductions equivalent to the percentage of the advance payment given of the gross value of each statement that the Contractor will submit by reason of executed work.

### **(3) Bond for Good Use of the Letter of Credit**

When the payments for imported goods are made by means of the issuing of a Letter of Credit, the Contractor will have to submit at first this bond for the total value of the Letter of Credit.

This bond could be amortized at the same rate that the supplies are being provided and will be refunded to the Contractor once that CRM has provisionally received the goods paid by means of the Letter of Credit, whose good use is covered by the bond in question taking into account the Article 75 of the Public Contracting Law.

#### **(4) Bond Renewal**

The Contractor is obliged to maintain in force the bonds submitted according to their nature and the Contract terms. The renewal of the bonds will be done at least five (5) days before its expiration date, so to preserve the validity during the prevailing periods stipulated. If the Contractor does not do so, CRM will cash the bonds.

The expenses incurred by getting and renewing the bonds will be borne by the Contractor.

#### **(5) Retention Fund (Bond Fund)**

To assure the proper execution and the good quality of the materials, besides the bonds determined before, CRM will retain five percent (5%) of the gross amount of each statement in sucres as well as in foreign currency and will deposit such amount in a special account opened at the name of the Contractor, in accordance with the regulations issued by the Monetary Board.

This retention will be made in the currencies that the payment was made, and it will be refunded in the same currencies by the Banco Ecuatoriano de la Vivienda. The refund of the Retention Fund will be made at the provisional reception, real or presumptive.

The interest that these retentions may yield, in local as well as foreign currencies, at the corresponding rates set by the Monetary Board, will belong to the Contractor and will be refunded to him jointly with the Retention Fund.

To refund the Retention Fund and the corresponding interests, it will be enough for the Contractor to present to the Banco Ecuatoriano de la Vivienda the total Provisional Reception Certificate, as it may correspond or the legal decision by which a competent judge notifies the Contracting entity with such provisional presumptive certificate.

The values referred in the aforementioned paragraph will not be object of retention, sequestration or embargo by third parties.

The retention fund will be used to repair or change those parts of the Work where construction defects, bad quality or non compliance of the specifications by the Contractor are discovered.

#### **II.1.9 KNOWLEDGE OF THE WORK**

The Contractor shall declare that he is fully informed and that knows plenty of all related with the nature of the Project, characteristics of the Works and installations and facilities

required, before or during the Contract and of any other matter that could affect it in any form or manner.

Any fault, carelessness, error or omission of the Contractor to get the information does not exempt him from the responsibility to appreciate and solve adequately the difficulties and to comply with the obligations derived from the Contract.

The Contractor shall declare as well that he is informed by CRM by means of the pre-contractual documents of all that is related with the nature and location of the Works, and with its general and local conditions that could influence in its execution, conservation and costs, the access roads to the Site, the topographic, geological, geotechnical, climatic conditions and the hydrologic variations, the characteristics of the local materials, the port facilities, the communication networks, acquirement and storage of the equipment and materials. Also the Contractor shall declare that knows and commits himself to use the best engineering techniques applicable to the execution of the Project.

#### **II.1.10 SUPERVISION**

In all relation with the Contractor, CRM will be represented by the Supervision, in according with what is indicated in Clauses II.2.1 and II.2.2 of the General Dispositions, CRM will notify its nomination to the Contractor in writing.

The Supervision will verify the accuracy and quality of the Works constructed by the Contractor, by means of the watchfulness for strict compliance with the Drawings and Technical Specifications. It will also demand that the works be carried out within the contractual terms.

If during the construction process, the Supervision detects deficiencies, it will make them known to the Contractor, who will be obliged to introduce the necessary corrections.

#### **II.1.11 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall assume total responsibility for the performance of the obligations of the Contract, becoming subject to the Drawings and Technical Specifications and to the Supervision's Instructions up to the Final Reception of the Works.

The Contractor will provide the technical, administrative, and auxiliary personnel necessary, as well as the equipment, labor, and other indispensable elements for the execution of the Contract.

The labor and social relations derived from the works related with the execution of this Contract, are the sole responsibility of the Contractor.

During the Construction and up to the Total Provisional Reception of the Works, the Contractor will adopt the adequate measures for the care and conservation of the Works; CRM will not be responsible of damages, defects or destruction occurred in this period.

All the activities that the Contractor carries out, directly or indirectly and that are related to the construction of the Works, will have to be developed within the technical standard that are established in the Ecuadorian Laws and in case that by any circumstance it is not so, the damages and losses produced by noncompliance will be the sole responsibility of the Contractor.

The Contractor shall bear all the charges derived from reason of this Contract, that legally prevail in Ecuador at the date of the tender submittal, such as, taxes, municipal, provincial and national rates and contributions that may be applicable; taxes and rates to the mercantile transactions; income tax; custom duties; import taxes; duties to the Ecuadorian Institute of Social Security and Profit Sharing.

#### **II.1.12 CONTRACT TRANSFER AND SUB-CONTRACTS**

The Contractor could neither transfer to any title, nor assign, nor transfer the total or any part of this Contract or the rights and actions implied in it to him. No person that forms part of the Association could transfer his rights in favor of other members of such Association or in favor of third parties.

The Contractor will be able to sub-contract, up to an amount equivalent to the 25% of the Works determined in the Contract, with previous written authorization from CRM. He will be able to substitute the Subcontractors presented and accepted by CRM, with other equally qualified, as long as it is duly authorized so by CRM.

The Contractor will be wholly responsible before CRM by the actions and omissions of his Subcontractors and the people directly or indirectly employed by them, in the same manner as if these were his own employees.

CRM reserves the right to request the Contractor the anticipated fulfillment of any sub-contract, if at CRM's criteria the execution of such contract is affecting the normal development of the Works object of this Contract.

Neither of the constant stipulations of this Contract, nor in the Documents of the same will give place to contractual relationship between the Subcontractor and CRM. Neither the authorization given by CRM, for sub-contracting one or more parts of the Works nor the approval of a subcontractor, will exempt the Contractor of any of his obligations acquired by virtue of this Contract, nor can be interpreted as suspension of any of the stipulations of the Contract.

It is to be kept on record that the salaries of the laborers that belong to the Contractor and Subcontractor can not be less than the minimum wages established by Law. In the same manner, it is clarified that the Subcontractor will have to comply with all pertinent laws. The noncompliance of this stipulations will be considered, for all effects, as noncompliance of the Contract.

### **II.1.13 CONTRACTOR'S CLAIM**

All claims that the Contractor may have by reason of actions and omissions from the Supervision, must be presented by the Contractor to the Supervision before passing fifteen (15) days counted from the date of the facts or series of facts or the decision that gave reason for the non conformity of the Contractor; if the Contractor does not do so within said term, it will be understood that he is in agreement with it. Once the claim is submitted, the Supervision will verify the available information and will answer the Contractor within the fifteen (15) following days, asking for additional information, supplying clarifications to the Contractor or modifying or revoking or confirming the decision taken already. The Contractor will have the right for an appeal in first instance to the Director of the Project within the fifteen (15) following days of the rejection from the Supervision and in second instance to the General Manager of CRM. While he appeals, the Contractor can not suspend the execution of the Works unless CRM orders it so, in such case, he will proceed with the orders received.

The appeals that the Contractor presents to the General Manager of CRM will have to be attached to a copy of the corresponding correspondence crossed between him and the Supervision and will have to back it up with documents so to facilitate the study of the case by the General Manager of CRM. This one will notify his decision to the Contractor, within the thirty (30) following days after receiving such appeal, being the decision of the General Manager without appeal for CRM.

If the resolutions adopted by CRM regarding a claim from the Contractor establishes differences or controversies that can not be solved by mutual agreement between the parties, the Contractor can appeal to the competing judicial organisms, according it is established in Clause II.1.3.3 of the Draft Contract.

### **II.1.14 ORIGIN OF GOODS AND SERVICES AND EQUIPMENT AND MATERIALS IMPORT**

#### **(1) General**

The goods and services to be provided are from all countries and areas as General Untied.

The Contractor will have to try to use a maximum of resources, materials as well as equipment produced locally in accordance with the technological desegregation (CEBCA).

The loading and transport and maintenance works are the sole responsibility of the Contractor, at the satisfaction of CRM, of the equipment and materials necessary for the execution of the Works.

#### **(2) Permanent Equipment and Materials**

All the equipment, accessories, repair parts, material and supplies that the Contractor needs to import to be definitely incorporated in the Works object of this Contract, will be imported



in the name of CRM, with that tax exemptions and tariff rights that are due, according with the prevailing legal stipulations. Those that are rejected by the Supervision by any reason, will have to be re-exported immediately, at the expense and responsibility of the Contractor.

### **(3) Equipment for the Construction of the Works**

The import of machinery, vehicles and equipment that the Contractor needs for the construction of the Works and that are going to be re-exported will become subject to the regulations prescribed for the temporary importing established in the Organic Law of Customs.

All the equipment that the Contractor may need for the execution of the Works object of this Contract, will have to be introduced in accordance with the corresponding prevailing laws and regulations, with the previous authorization of CRM.

The Contractor could not be able to enrapure, dispose, nor burden the imported equipment and materials for the construction of the Works, without the previous authorization of CRM and only after having complied with the regulations determined by Law.

#### **II.1.15 IMPORT PROCEDURE**

The Contractor must submit to CRM the necessary documentation to get the import authorization and to get the import tax exemption when applicable, of all the equipment and materials that have to be imported and of those that have to be brought in temporarily for the execution of the Works.

The documentation that the Contractor presents must include the transport insurance policy, this policy will cover the risk of transport of the equipment and material between the loading place and the Site where the Works are to be carried out.

All the procedures and transactions and other inputs that pertain to the import or temporary bringing in of equipment and materials for the Project, including the import or bringing in permit, tax exemptions, authorizations, custom procedures and other inputs as well as all that may be necessary until the imported or brought in equipment and materials are in the works site will be the responsibility of the Contractor. In the same manner, the Contractor will have to get, by his own account, the corresponding exporting permits from the source country for all the necessary machinery and equipment for execution of the Works.

Each time for the processing, CRM will have to issue an authorization, sign a document or submit a request, it is obliged to do it in the term of eight (8) working days as long as the documentation submitted by the Contractor is complete, elaborated correctly and to the satisfaction of CRM. In the event that such documentation is incomplete or that requires corrections, the mentioned term will run from the date that the Contractor satisfactorily submits to CRM the documentation.

The delays and losses incurred due to delays in the import or bringing process of equipment and materials for the Project, that are not imputable to CRM, will be under total charge and responsibility of the Contractor and will not give right to increment of terms, except if they are the result of action or omission of CRM or other Ecuadorian governmental entities related to attaining the import permits and or tax exemption of the corresponding import rights.

The Contractor is under the obligation to prove to the Supervision in writing and duly documented that all delays incurred are not his responsibility within three days of beginning such delays.

All the expenses related with the transactions for importing, including insurance, taxes, surcharges, fiscal stamps, rates, insurance policies, etc., and the custom clearance charges such as port rates, taxes, storage, container rental, transport, insurance enlarging and bonds, if necessary, will be borne by the Contractor.

Notwithstanding that the supply of the materials for the execution of the Works, as well as any imported element that has to be incorporated to the Works is of sole responsibility of the Contractor, CRM, in the measuring of his possibilities, will collaborate with the Contractor, requesting the State Institutions an speedy procedure for the import of materials and elements to be required.

#### **II.1.16 INSPECTIONS, TEST AND RECEPTIONS**

##### **(1) Inspections and Test**

In any moment and during the execution of the Contract, CRM and the Supervision will have the right to inspect and test the materials, equipment and the constructed Works, in order to verify its conformity with the Drawings and Specifications of the Contract.

With this purpose in mind, the Contractor will provide all the facilities and reasonable assistance, at no additional charge to CRM.

If the inspected or tested materials, equipment or Works are not accordingly to the Drawings and/or Specifications, CRM could reject them and the Contractor will have to, at no additional cost to CRM, rectify them in the necessary measure, so to comply with the Specifications.

Nothing of what is prescribed in this Clause will exempt the Contractor of his obligations regarding the bond or any other matter arranged in the Contract.

##### **(2) Provisional Reception**

Once completed the total amount of the contracted Works and concluded at satisfaction the test to said Works, the Contractor will notify the completion of the Works and will request to CRM to carry out the Total Provisional Reception

In accordance with what is established in the Article 86 of the Public Contracting Law, CRM at the Contractor's request will carry out the Partial Provisional Receptions.

CRM will set the date and the hour when the Total Provisional Reception requested will be carried out, the same that will have to start within fifteen (15) days counted from the date the request from the Contractor was received, for such effect, CRM will designate a Commission so to jointly participate with the Supervision in the Provisional Reception. In case that CRM refuses to carry out the diligence or does not state any pronouncement in such respect, it will be proceeded accordingly to what is stipulated in the Article. 85 of the Public Contracting Law.

If during the verifying of the Works, it is found certain parts to be incomplete, defective or non acceptable, the Supervision will notify the Contractor the defects or omissions that have to be corrected or repaired as well as their period. Once such deficiencies are surpassed, the Contractor will notify the Supervision so to proceed with a new verification in the term of seven (7) days once the new notification is received. If after the verification carried out accordingly the Supervision considers that the Works are satisfactory the Total Provisional Reception Certificate will be subscribed for all the Works object of this Contract.

From the date of the Total Provisional Reception Certificate, real or presumptive, CRM assumes the total control, dominion and safekeeping of the Works object of this Contract, as well as the maintenance costs. Excepting the cost of the executed works to repair the defects due to the use of material or labor that is not in accordance with the Contract, which will be borne by the Contractor.

### (3) Final Reception

Twelve (12) months after the Total Provisional Reception Certificate, real or presumptive, is subscribed, with a previous request made by the Contractor and if during this time there were no evidence in the Works of any deficiency or non compliance of the technical characteristics, then the procedure for the Final Total Reception Certificate will take place.

Once the Final Total Reception Certificate is subscribed, CRM will refund the Performance Bond to the Contractor.

If during the period mentioned above it was established, by means of inspection by the Final Reception Commission, that some of the constructed Works do not correspond to the technical characteristics specified or are object of a claim according to the Contract Documents; the Contractor is obliged to correct it at his own expense, previous to the subscription of the Final Reception Certificate. In case that the Contractor refuses to comply, CRM will be able to cash in the Performance Bond.

In any event, the Final Reception Certificate will only be signed when all and every one of the contracted Works be found completed, tested and functioning to the entire satisfaction of CRM. All the technical tests that the Supervision may consider to carry out in addition to those stipulated in this Contract will be borne by CRM.

All the maintenance expenses of the Works, from the beginning of them up to the Provisional Reception real or presumptive, will run at the expense of the Contractor, who, besides will be responsible of the maintenance and vigilance that may have to be done in the period between the Provisional Reception and the Final Reception, as long as such repairs be attributed to defects in the execution of the Work, as it is indicated in Sub-clause II.2.11.5 of the General Dispositions.

The Provisional and Final Certificates will be subscribed by the representatives of the Contractor, the member commissioned by CRM, the Supervision that will act as observer and other officers that the Entity determines. The Commission that carries out the Final Receptions will be conformed within the 15 working days after the Contractor's notice, and is so has, the Supervision accepted and will proceed according what is stipulated in this Clause and the Articles 85, 87 and 88 of the Public Contracting Law and the Articles 121, 122, 123, 124 and 125 of the Regulations of the mentioned Law.

The Commission members that subscribe the Certificates of Submittal-Reception will be civil and criminal liable by what is contained in them.

#### **II.1.17 DEFINITIONS AND INTERPRETATIONS**

The terms contained in this Contract or in any document that forms part of it or that refers to it, will have the following scope and meaning:

- (1) When the terms are defined by the Ecuadorian laws, such definitions will be of compulsory acceptance.
- (2) The lack of legal definition will be subject to what is established in the Contract Documents, Clause I.1.24 of the Instructions to the Tenderers.
- (3) The lack of legal of definition and/or of the documents will be subject to the natural and obvious meaning of the term in the Republic of Ecuador.

It is clearly agreed that the Clauses contained in this Contract prevail over any divergence that may arise in the other documents that form part of the same.

When there is a contradiction, difference or discrepancy between the Clauses of this Draft Contract or the interpretations of the terms used in it and its documents, it will be subject to what is decided by CRM and the resolution given by CRM; will be compulsory for the Contractor. Nevertheless, the Contractor, could appeal it in the terms established in this Contract.

Regarding the interpretation of the terms of technical order related to the compliance with the Specifications and Drawings, they will be subject to the what is provided in Clause II.1.3.3 of this Draft Contract.

## **II.1.18 MINIMUM EQUIPMENT FOR THE EXECUTION OF THE WORKS**

### **(1) General**

The minimum equipment that the Contractor commits to place in the Work site, is the one that is listed in the annex of this Draft Contract. This equipment, in quantity and quality, could be modified by agreement between the Contractor and the Supervision, only in average of the Technical Conditions of the Works execution.

It is clearly established that, the Supervision when approving the quantity and quality of the equipment, does not implies any responsibility to CRM, neither by it assumes any responsibility regarding results from the use of the Contractor's equipment, being such responsibility entirely of the Contractor.

The equipment for the execution of the Works will have to satisfactorily answer the conditions prescribed by the Technical Specifications and/or the standards in them; be it regarding the characteristics of the equipment or regarding what is related to the works or results attained in its use.

The Supervision could demand the substitution of the equipment units that to his judgment are not satisfactory. He could also, in the same manner, demand the Contractor to complete the equipment units that he may consider necessary for due compliance of the Execution Schedule of the Works.

Neither could the Contractor be able to carry out any reduction or modification on available equipment authorized by the Supervision, nor in the equipment that he may have in use and that is in listed in the Schedule Item 13 of Clause II.1.2 of this Draft Contract, without the express authorization from the Supervision.

The Contractor could not be able to withdraw from the Work Site, before its completion, any temporary installation, nor any equipment unit or material, without the authorization from the Supervision.

### **(2) Equipment Approval**

The Contractor will present to the Supervision, within the thirty (30) days following the subscription of the Contract, an up-to-date Schedule for utilization of the construction equipment, indicating the stages for entering the equipment and the units to be imported with the funds of the Advance Payment. Once the Supervision gives the approval for such program, the Contractor will elaborate a detail listing, required to obtain the import permits, which will transacted by the Contractor with the previous authorization of CRM, which will be issued in a maximum period of eight (8) days from the Contractor's request.

**(3) Contractor's Responsibility**

The approval for the type, capacity and number of equipment units proposed in the Equipment Program Utilization and the submittal of import permits for these equipment or for the additional equipment that the Contractor proposes to use in the execution of the Works, will not exempt him from the exclusive responsibility, regarding its utilization and performance to comply with the terms established in this Contract.

**(4) Sufficiency of the Equipment**

With the due anticipation and satisfaction of the Supervision, the Contractor will have to have the works sites, duly installed and ready to work, the equipment that is required in each work front in accordance with the dates indicated in the Execution Schedule, for the commencement of the due labors. The Contractor, without infringing what is stipulated in this Clause, will have to increase, add or substitute with another of similar quality and power, said equipment whenever necessary to assure the completion of each one of the work phases, within the terms provided.

**(5) Prohibition to Enrapture or Encumber Equipment**

Additionally to the limitations regarding enrapture equipment as indicated in Clause II.1.14, it is also expressly established that the equipment bought with the Advance Payment Funds, submitted by CRM to the Contractor, could not be object to enrapture, encumber or limitation of dominion in favor of any other person, without the express authorization of CRM.

**II.1.19 ADDITIONAL WORKS AND WORKS MODIFICATIONS**

CRM could introduce modifications in the form, quality and quantity of the Works or in any part of them, that to his criteria considers necessary. Therefore, CRM could provide as indicated in the Sections 1 and 2 of the Chapter VII of the Title VI of the Public Contracting Law, previous authorization of the OECF.

**II.1.20 IMPROPER PAYMENTS**

CRM reserves the right to claim the Contractor at any time, before or after the completion of the Works, regarding any improper payment carried out by calculation error or any other reason. The Contractor is obliged to satisfy this by solving the claim that by this motive may be introduced by acknowledging besides the interest accrued applicable in the construction sector, in force in the Banking System legally established in Ecuador, from the date when the improper payment was made.

The payments that CRM makes to the Contractor will not exempt him from complying with his obligations that are corresponding by reason of this Contract. The lack of claim from CRM by any violation of the Contract, will not be considered as condonation or forgiveness of the same.

## **II.1.21. RELATIONS BETWEEN THE PARTIES**

### **(1) General**

In all relations with the Contractor, CRM will be represented by the Supervision, of whose members, organization and eventual changes will be notified by CRM by writing to the Contractor.

During the execution of the Works the Contractor will be represented by the General Superintendent of the Works, who will be an engineer of high solvency and professional experience, in charge of obligatory presenting the monthly work programs to the Supervision and will have the responsibility to provide the information regarding the progress of the Works, the anomalies of the program if any, and to suggest the corrective measures to be taken.

All the Project personnel employed by the Contractor will be under the exclusive laboral dependency of him. The Contractor assumes all the duties of employer without any responsibility of CRM, as expressly is stated and accepted by the Contractor.

CRM through the Supervision, at any moment, could demand the substitution of any person employed by the Contractor. The substitution will not give place for any claim by the Contractor, neither will be considered as modification in the terms of the Contract.

The Contractor is obliged not to substitute by his own initiative, during the development of the works at the Site, the key technical personnel approved at the moment of the Contract signing. Nevertheless, the Contractor could substitute his technical personnel with the previous qualifying and approval of the substitute by the Supervision.

The Contractor, on the other hand, is obliged to increment his personnel without any additional cost to CRM, if the Supervision considers that the progress of the works demands it so according to the Execution Schedule of the Works.

All the orders and communications, of any nature, between the Supervision and the Contractor, will only be done by writing in the Spanish Language and will be transacted in the prescribed manner in this Contract and/or its documents. Consequently, every time the words such as "communicate", "notify", and similar are found in the Contract, it is understood that it is in a written manner. These communications will be carried out by means of the Orders, Requests and Works Books by means the forms designed by the Supervision and approved by CRM.

### **(2) Orders Book**

The Supervision will notify the Contractor the written orders, recommendations and approvals to the Contractor and according to the terms and stipulations of this Contract. These communications, which will be done in triplicate and the pages will have to be duly numbered, will constitute the Orders Book.

The end destiny of the order will be as follows: the original for the Contractor, the duplicate for the Supervision and the triplicate for CRM. The Contractor is obliged to keep in his field office all the orders issued by the Supervision.

The Orders Book, could be signed by the Project Supervision Director or by the Resident Supervision.

### (3) Requests Book

The requests and ordinary correspondence of the Contractor to CRM, regarding the work execution, will be made using the Requests Book that will have the pages numbered in the same manner as the Orders Book. The original will be for the Supervision, the duplicate for the CRM and the triplicate for the Contractor's files.

In the same manner as the Contractor according to what is established in Clause II.1.13 of this Draft Contract, the Supervision will have a term of fifteen (15) days counted from the reception day of the Requests Book to order, approve, express disagreement, disapprove, reject or clarify, according to the terms of this Draft Contract the matter in question contained in the Requests Book. If the Supervision does not answer in such term, it will be understood that the matter is accepted and/or approved, as it may correspond the arguments or requests or claims made by the Contractor.

The Contractor is obliged to keep the Requests Book office with the triplicates of all the request notes utilized by him.

### (4) Works Book and Field Authorizations

The Works Book are destined to keep on record the observations and field comments of the Supervision and the Contractor.

The Works Books must be kept with the pages duly numbered, each book numbered, with original and three copies. The original will remain in each Book, the first copy will be for the Contractor, the second copy for CRM and the third copy for the Supervision.

Each Works Book will have to have an opening minute indicating the commencement of it and the Work parts which it refers to, duly signed by authorized representatives from the Supervision and Contractor.

The Works Book and Forms will be kept in the Contractor's field office, under his responsibility with access to the Supervision at any time.

After totally being filled up each Works Book and Forms, these will have to be filed by the Contractor so as to afterward send all the originals to the Supervision, at the completion and at the Total Provisional Reception of the Works.



The record of the Works Book and Forms must be legible, dated and signed with the name of the sender, duly authorized by the representatives of the parties at the Work Site.

(5) Other Correspondence

The parties could in the same manner mutually send each other correspondence regarding special matters of the Contract, which will have to be signed by the Director of the Project, by General Manager of CRM or by who substitutes him and by the General Superintendent of the Contractor.

All matters related with the execution of the Contract, will be technically and administratively subject to the instructions and orders from the Supervision, which will demand the performance of the stipulations of the Contract and the instructions issued during the work execution.

CRM by means of the Supervision, will have under charge the revision and approval of the drawings presented by the Contractor, interpreting the Drawings and Specifications, and will do all that may be necessary so to assure that the work execution be carried out smoothly in accordance with the stipulations of the Contract.

CRM directly through the Supervision will provide the following Drawings and backgrounds:

(6) Tender Drawings and Detailed Design

The Tender Drawings will have the object to establish the scope of the contracted Works and the initial design of the different project components and to facilitate determining the unit prices and the execution costs of the Works of this Contract.

(7) Detailed Design

After the Contract signing, the Tender Drawings, due to the fact that they do not contain an adequate detailing, will be replaced by the Detailed Design Drawings, elaborated by CRM according to the submittal schedule for Drawings that is stipulated in Sub-clause II.2.5.7.3 of the General Dispositions.

Additionally the Contractor will prepare the frame drawings, the complementary reinforcing bars drawings, and the temporary and auxiliary work drawings that he requires for the adequate execution of the Works. Copy of these drawings and statements will be submitted by the Contractor to the Supervision, for his approval, which will be carried out in a maximum term of fifteen days.

If the Contractor desires to propose modifications to the Detailed Design Drawings, he must notify the Supervision before commencing the corresponding works. The Supervision will have the power to accept the modifications proposed by the Contractor or to reject them and to answer the observations and clarifications in the term of fifteen (15) days. These changes

or modifications will not imply increment in the execution terms of the Works object of this Contract, and consequently, the Contractor will not alter neither will suspend the construction sequence of the Works, except when the Supervision otherwise states.

If a result of the timely and documented observations formulated by the Contractor, that might have been rejected or disesteemed by the Supervision result in defect or damage, the Contractor will be exempt of responsibility for such damages or defects.

The Contractor will have to submit to the approval of the Supervision, the drawings elaborated by him for the construction of the Works, as well as the details of supplies and special facilities that he might be obliged to provide. The approval of such drawings by the Supervision does not exempt the Contractor from any of his responsibilities that correspond to him by virtue of this Contract.

#### **(8) Location, Alignments and Levels**

The locations, alignments and levels of reference that are required by the Works, will be given by the corresponding outlines of structures, tunnels, open channels roads, buildings, etc. by the Supervision, which will set the benchmarks and landmarks to have a permanent reference, according to what is specified in the General Dispositions. It will be the obligation of the Contractor the care of the stakes and references since the obligation of CRM is limited to give the stakes and references only once. The replacement of data and alignments will be made by the Contractor at his own expense, notifying the Supervision so that it can be revised in the manner he considers convenient in order to give his approval. In special cases, is so considers necessary, the Supervision may authorize in writing the Contractor to carry out some replacing, which will have to be approved by the Supervision.

All the other topographic or replacement operations required to construct the Works will be carried by the Contractor at his own expense.

The Contractor will have to timely request, with at least ten (10) days ahead of time and by writing to the Supervision the laying out for the works that he is going to execute and the Supervision will have to provide at least ten (10) days ahead of time to the programmed date for the execution of such works. The execution term that may correspond to this part of the Work will be extended in the same number of days that, the Supervision delays in providing the required information after the indicated term, having the Contractor to send a notice of communication to the Supervision in this regard. This extension of the term will not give the Contractor the right for additional payment.

CRM will not be responsible of the time loss that the Contractor may have due to the lack of data, lines and levels that had not been requested by him with the due detail and in time.

#### **(9) Right to Modify the Location, Alignments, Drawings and Specifications**

At any time, during the development of the Works, and by reason of the information attained regarding the foundation, quality of materials for the construction of the embankments or

due to any other motive, CRM will be able to freely change the locations, alignments, dimensions, details or Specifications, object of the Contract and will proceed with all rights to order those modifications and the Contractor is obliged to execute such works according to the modifications so ordered, without getting the right to additional payment or extension in the terms, unless the stipulated above.

When the changes ordered by CRM produce an increment of costs and/or term that will make non applicable the terms and/or contract prices, the Contractor, in the claim that he presents, must demonstrate to the Supervision, by means of a conscientious analysis and founded on reliable data, such increment of cost and/or term. The aforesaid has no application for lump sum prices, neither to the unit prices of the tender executed in base to the Drawings and Specifications of the tender which shall remain fixed, nor will they be cause to temporarily suspend the works by the Contractor, while the claims are solved due to such concepts.

The lack of fulfillment of the orders and stipulations arisen from the Supervision in compliance with the clear contractual stipulations, will be enough motive for the Supervision to set the sanctions indicated in Sub-clause 11.2.10.3 of General Dispositions and for it to order the paralization of the works; and eventually, for it to proceed the conclusion of the Contract subject to what is provided for this effect.

#### **11.1.22 CONTRACTOR'S AND CRM'S RESPONSIBILITIES**

The Contractor will be the only one responsible for the organization and execution of the Works and the prompt and timely compliance with the obligations that correspond to him and in conformity with the object of this Contract. Consequently, he will be wholly and entirely responsible for the quality of the materials and, in general, of the use of all goods, means, elements or materials or human resources, be it approved or not, or recommended by CRM.

The Contractor will refund to CRM the cost for the expenses that CRM may have incurred into as consequence of the execution of Works caused by non compliance, delays or other causes imputables to the Contractor, CRM could be able to discount these amounts from any payment due to the Contractor.

The Contractor will be responsible for the adequate and timely preparation of all the documents, procedures and necessary transactions that will allow him to execute his work without interruption.

The Contractor is obliged to provide the room and board services for all his personnel at the works site or in places or populated areas that he may consider convenient. He is also obliged for the transportation of such personnel from the camps or towns to the works sites and viceversa, using the appropriate vehicles for such cases.

The Contractor in accordance with what is required by the Supervision will provide all the facilities for the execution of the Works developed simultaneously by other contractors at the

Site, according to what is established in Sub-clause II.2.5.13 of the General Dispositions, if that were the case.

The Contractor is obliged to allow CRM and to the other contractors the use of roads, bridges, installations, and services constructed or acquired by the Contractor for the execution of the Works, while these do not interfere with his activities.

The Contractor will have the right to the use of the access roads to the work sites in the condition that they are.

CRM is in charge of all procedures and expenses derived from the acquisitions of the areas in which the works, permanent or temporary, are to be executed, which will be carried out by the Contractor in accordance with the Execution Schedule presented in his tender, once it is up-to-date according to the contractual stipulations. In the same manner, CRM will have the charge of the corresponding expenses to obtain the exploitation rights for borrow areas, the right of way for the use of roads.

However, all the necessary works for the access and exploitation that these areas required will be in charge of the Contractor and at his own expense. The getting of similar services that the Contractor requires in other areas as well as the toll payment, relative to the use of the roads, bridges, etc., will run at the Contractor's expense.

The Contractor will have to notify in due time to the Supervision the necessities for occupying areas for camps and other facilities, but he can not occupy them until he receives the due authorization to do so.

The Contractor must provide the adequate protection to the real state and surrounding areas and the services that may have been put under his charge for his use, as well as, the access roads, rights of ways and employees, whose use CRM had authorized.

In order to facilitate the action of the Contractor in the different work fronts, CRM commits himself to:

- (1) Get and pay for the right of way for access to the works from the existing private roads,
- (2) Pay the indemnities for inevitable damages that may suffer the real state and other goods affected within the area to be occupied the projected constructions, and

Unless otherwise stated in this Contract, the land, gravel, sand, rock, minerals, wood, archeological objects and other materials or goods found in the work area or that are obtained in the excavations or other works carried out by the Contractor, are exclusive property of the Ecuadorian State or CRM according to the case.

The "excluded risks" of Contractor's responsibility and consequently at CRM's charge are those that effectively and fundamentally imposibilize in compliance with the Contract,

namely, hostility, war (making no difference if the war has been declared or not) sabotage, invasions, rebellions, insurrections, occupancy of any nature, civil war, sublevation, disturbances, mutiny, terrorist acts, guerilla, damages caused by the force of nature and other events proved to be beyond control of the parties.

## **II.1.23 INSURANCES**

### **(1) General**

The Contractor shall commit himself to take up and to maintain in force until the date of the Final Reception of the Works, under his responsibility, at his expense and under his charge, the insurances indicated in this Clause and all insurances prescribed in the Ecuadorian Laws. These insurance policies must be taken up with insurance companies in accordance with the prescribed in the Ecuadorian Laws.

The Contractor's responsibility is to comply with all the obligations and the terms of such insurances, so to keep them operating and in force; if not done timely so, CRM will do it at the Contractor's expense. It is obligation of the Contractor to give the immediate corresponding notice to CRM, in case of disaster, in order to claim his rights that he may have within the term of the corresponding policy.

The Contractor will submit for CRM's approval the policies, within the thirty (30) following days of the subscription date of the Contract and, within the ten (10) following days after such approval, the Contractor will submit the original of the corresponding policies.

The Contractor will provide CRM with a new insurance policy, up to five days before the expiration date of a policy. If not done so, CRM will do it at the expense of the Contractor.

The Contractor will provide a certification from the insurance companies indicating that the policies are in force and will expire only after CRM is notified with thirty (30) days in advance. Without contradicting the aforementioned, CRM reserves the right to make, previous agreement with the Contractor, any change or modification in the policies.

If the Contractor did not present the policies at CRM's satisfaction and consequently did not deserve the right to be approved, CRM reserves the right to undertake at the Contractor's expense the policy that for the effects of this Contract might correspond. The Contractor will provide a copy of the renewal documents, up to fifteen (15) days before the expiration date of the policies, if not so, CRM will undertake such task, at the Contractor's expense.

The Contractor will also provide a certification from the insurance companies, indicating that the policies are in force and only expire after CRM is notified with thirty (30) days in advance.

## **(2) Insurance for Damages to Works, Facilities and Third Parties**

The Contractor, without contradicting all the responsibilities derived from this Contract or the demand required by Ecuadorian Laws, will have to get at his own expense, and to keep in force up to the date of the Final Reception of the Works, an insurance against any type of risk, ("All Risk" type) at the name of CRM and at his own name and at the name of his Subcontractors and agents in order to cover the damages to the Works and its facilities, besides answering for the occasional damages to third parties.

The damage insurance policies for the Works (All Risk) and the ones of responsibility for third party damages will be issued in favor of the Contractor as main insured, and CRM as additional insured up to the date of the Provisional Reception of the Works. From this event on CRM will be the main insured and the Contractor and Subcontractors as additional insured up to the Final Reception of the Works, date when such policies will expire.

The Contractor assumes the deductibles for damages to the Works up to the date of the Provisional Reception of them. Each party will assume the deductible costs regarding the insurance for damages to third parties in the measure that it may correspond, from the date of the Total Provisional Reception.

This insurance policy will be attained and paid by the Contractor being clearly understood that this insurance does not exempt him from the corresponding responsibility under this Contract.

## **(3) Insurance for Contractor's Personnel**

The Contractor shall insure all the personnel in the Ecuadorian Institute of Social Security (IESS) in accordance with the prescribed by Law, and besides he will hire the services of private insurance companies, for the coverage of all work risks not covered by the IESS, according to Sub-clauses 11.2.4.7 and 11.2.4.8 of the General Dispositions, during the waiting period so that the affiliates can enjoy the benefits given by this Entity and besides, to cover risks not covered or partially covered by the IESS.

## **(4) Contractor's Liability**

CRM will not have any obligation to attend the claims or to pay the indemnity costs for damages to people or goods, caused by the Contractor's or his Subcontractor's personnel or equipment, and in the event that it is necessary by executed judicial judgment, to do it in the name of the Contractor, CRM will have the right to demand from the Contractor the refund of the paid value for such concept, plus the incurred costs. The Contractor will reimburse to CRM such amount within the sixty (60) following days since the presentation of the corresponding claim.

CRM is authorized to impute such amounts from the total value of the monthly invoices or any other invoice that the Contractor had presented for payment, in case that the Contractor did not paid such amounts, within the herewith determined term.

#### **II.1.24 TESTS**

The Contractor shall carry out by his own means and at his own expenses the tests called for in the Specifications, standards and in his tender.

The Contractor shall notify the Supervision, at least fifteen (15) days before the dates when such tests will be carried out.

All the equipment to be incorporated, materials and works required for the tests in accordance with the Technical Specifications, will require an authorization or corresponding certificate from the Supervision, previous to the installation in the work and after the installation regarding its functioning. If CRM wishes additional tests, these will be borne by CRM.

#### **II.1.25 TECHNICAL DOCUMENTS THAT THE CONTRACTOR MUST PROVIDE**

The Contractor is obliged to provide the Supervision, in Spanish, for the approval, within the thirty (30) days counted from the subscription date of the Contract, in a reproducible copy and three more simple copies, of the documents mentioned in Sub-clause II.2.5.3. of the General Dispositions.

CRM, within the term of the fifteen (15) days, from the date of the reception, will approve or formulate the observations to this documents.

It is understood and agreed that until approval of the programs mentioned in Sub-clause II.2.5.3 of the General Dispositions is done, the program contained in the Contractor's Tender will be considered in force, for all purposes of this Contract. The construction period will be defined according to Clause II.1.6 of this Draft Contract.

The Contractor will present to the Supervision, every three (3) months the reports and documents established in Sub-clause II.2.5.4 of the General Dispositions.

Besides this, the Contractor shall provide the Supervision on a monthly basis with the calculation of the work quantity and the monthly statement, carried out in the last month, the accidents report and special reports requested by the Supervision, according to the terms contained in Sub-clause II.2.5.6 of the General Dispositions.

The Contractor shall provide CRM, when so requested, the internal data for expenses and the documents that will allow to have an idea about the cost of each one of the work items for statistical and future purposes. In the same manner, the Contractor shall have the obligation to deliver all background and data requested by the supervision in order to verify the compliance of the Ecuadorian Laws and what is requested to verify the data related to statistics of industrial safety.

It will be the expense of the Contractor, the elaboration of all photographic and filming documents of the Works, of its progressive development in accordance with the established in Sub-clause II.2.5.5 of the General Dispositions.

#### **II.1.26 CONTRACT ENDING**

CRM will terminate the Contract by the following reasons:

- Compliance of contractual obligations;
- Mutual agreement by the parties;
- Executive judgment that declares the Contract null;
- Unilateral statement from the contracting party, in case of non-compliance by the Contractor.
- Executive judgment that declares the ending of the Contract at request of the Contractor.
- Death of the Contractor or by dissolution of the Contractor juridical person, that does not originate a voluntary internal decision of the competing organism of such juridical person.

It will be carried out in accordance with the stipulations in the Article 107 of the Public Contracting Law.

##### **(1) Compliance of Contractual Obligations**

Once completed the total execution of the contracted Works, will now proceed as indicated in Clause II.1.16 of the Draft Contract and Clause II.2.11 of the General Dispositions.

##### **(2) Mutual Agreement by the Parties**

When by non-foreseen circumstances, be it technical or economical, or by causes beyond control or an Act of God, it was not possible or convenient for the public interest to totally or partially execute the Contract, the parties could, by mutual agreement, accord in the ending of the all or some of the contractual obligations, in the status that they may be. The causes must be verified by CRM and the Contractor.

Once agreed upon the ending of the Contract, the maximum authority of the contracting entity, in the term of six (6) days, will send to the State Attorney General, for his approval, the Contract conclusion project and the documents that justify the existence of causes that drove to the conclusion of it.



Once the Contract ends by mutual agreement and before to the favorable judgment issued by the State Attorney General, the contracting entity could contract the execution of the items that are necessary for the conclusion of the Work or project, or to carry them out by direct administration or to contract acquisition of goods and services, being subject to the law regulations and its procedures.

The conclusion by mutual agreement, will not imply waiving of the acquired rights in favor of the contracting entity or the Contractor. Such entity could not celebrate a contract afterward regarding the same object with the same Contractor.

In all other cases it will be done in accordance with what is established in the Articles 97 and 108 of the Public Contracting Law.

**(3) Unilateral Statement from the Contracting Party, in Case of Non-compliance by the Contractor**

Any of the motives indicated afterwards, duly verified by CRM, will give CRM the right to unilaterally and declare in advance the conclusion of the Contract. For such effect it will be enough that a notice be sent to the Contractor notifying this decision. In any case, CRM keeps the right to claim the payment for indemnity due to damages and losses moreover to cash in the corresponding bonds.

- (a) If the Contractor did not commence the Works in the term of fifteen (15) calendar days, from the date of the Commencement Order, or if he suspends and/or abandons for more than sixty (60) consecutive days without reason of force majeure or an Act of God.
- (b) If the Contractor, demonstrates serious non-compliance, negligence or inability in the execution of the Works as required in the contractual terms for the effective compliance of the contractual obligations.
- (c) If the Contractor incurs in repeated non-compliance to the orders or dispositions given by the Supervision.
- (d) If the execution of the Works is delayed in such a manner that, the total value of the fines rises to five percent (5%) of the Contract value.
- (e) If the Contractor is declared in state of non-solvency or a creditor bidding is started against him.
- (f) Due to financial incapability of the Contractor due to bankruptcy.
- (g) Rights and actions ceasing carried out by the Contractor regarding the Contract, or in general.

- (h) Fraud or collusion between the Contractor and any of the entities or juridical person that collaborate in the execution of the Works, duly verified in a court of law.
- (i) If the Contractor neither contracted or renewed in due time the bonds established in this Contract.
- (j) If the Contractor did not comply with any of the regulations of the Work Code.
- (k) If the Contractor uses the Diplomatic ways to solve the controversies arisen from the execution of the Contract or if he requests the intervention of any person whose functions are of a Diplomat.

If CRM decided to unilateral state the anticipated conclusion of this Contract, by any of the provisions stipulated in the Clauses of the Contract, this will be notified in writing to the Contractor with 15 days in advance notice.

Jointly with the notice, CRM will send the financial, judicial reports and those reports from the supervisors or auditors regarding to the compliance and/or non-compliance of the obligation of the parties. The Contractor could expose his reasons within fifteen (15) days after the notice, proving not to have incurred in the cause or causes indicated for such conclusion or to remedy such non-compliance. If his answer satisfies CRM there will not be place for the conclusion of the Contract; in the opposite case if CRM notified in writing to the Contractor in the term of ten (10) days and to the State Attorney's Office in the term of six (6) days, the Contract will be unilaterally concluded. Under this circumstance, CRM will establish the physical progress of the Works and its financial and accounting settlement.

Unless CRM indicates otherwise, the Contractor will have to:

- (a) Refund CRM the balance not used of the Advance Payment that he may have in charge, plus the interests set by the Monetary Board for retention funds deposited in the Banco Ecuatoriano de la Vivienda.
- (b) Suspend all the Works on the date and in the condition specified in the conclusion notice.
- (c) Not to carry out any more activities, material orders, nor subcontracts of services, except the case for those necessary to complete the conditions of the works in the manner and date demanded by CRM in its notice.
- (d) Carry out all the actions tending to revoke the pending orders and to cancel the subcontracts related to the execution of the Works that must be interrupted in virtue of the conclusion notice, being of exclusive charge of the Contractor to pay the settlements that he may have to pay to the affected parties.

- (e) Pay and demobilize the corresponding personnel. The guards, warehouse and storehouse employees, will remain in service under the responsibility of the Contractor, until CRM finishes the inventory of the equipment and elements that will receive from the Contractor or until the Supervision authorizes it so.
- (f) Attend to the proceeding for the elaboration of the Act of Final Statement of Account, in the date that the Supervision sets, within the seven (7) consecutive days from the date of the conclusion notice. In case that the Contractor is not present at this proceeding, CRM will carry it out and it will be understood that the Contractor accepts wholly and without any claim such state account.
- (g) Maintain the Works and to impede the removal from it of the equipment, that are in the prevailing Equipment Use Program, materials and other elements that will be required for the construction until CRM authorizes its removal.

CRM will be able to directly continue the Works, and with the sole written notice to the Contractor will have the right to use totally, or part of the goods or materials acquired by the Contractor for the Works; to retain and use the facilities, equipment, repair parts, accessories, tools and other elements that may be necessary for the conclusion of the affected works for the completion of the Contract. Such facilities, materials, equipment and elements will be received by means of an inventory in which its description, quantity, status and costs will be indicated. If the Contractor is not present at this inventory proceeding, CRM will carry it out directly and will be understood that the Contractor accepts entirely and without any claim the inventory carried out by CRM.

CRM will pay to the Contractor, at the end of the Works, only the real prices of the used materials, the price of the imported and used elements and the lineal depreciating value of the equipment used in the Works, calculated over the buying price and according to the tables from "The Associated General Contractors of America".

In everything else, it will be subject to what is established in the Article 110 of the Public Contracting Law and Articles 131 and 123 of its Regulations.

#### (4) Contract Conclusion by Responsibility of CRM

Any of the motives indicated below, duly verified, will give the Contractor the right to ask for the conclusion of the Contract.

- (a) If CRM delays the payments established in this Contract or other contractual obligations, by more than sixty (60) days, so that the Contractor is prevented to continue with the execution of the Contract.
- (b) If CRM orders the total suspension of the work for a period larger than one hundred and twenty (120) consecutive days and this suspension is not motivated by force majeure, Act of God or Contractor's responsibility.

- (c) When the detailed designs are technically non-executable or severe defects in them were not solved.
- (d) When, before technical or economical circumstances unforeseen or in an Act of God or force majeure, duly verified, the contracting entity did not agree to terminate by mutual agreement of the Contract.

The conclusion of the Contract by causes imputable to CRM will be declared in definite manner by a Competing Judge.

#### **II.1.27 WORK SUSPENSION**

The Supervision, previous approval from the Project Director, could be able to order the Contractor the temporary suspension in the partial or total execution of Works of the Contract, for a period that he may consider necessary, according to what is stipulated in Sub-clause II.2.9.1 of the General Dispositions.

The Contractor on the other hand could paralyze or suspend totally or partially the works:

- (1) In case of delay larger than sixty (60) days after the period established for any payment established in this Contract.
- (2) In case of delay larger than thirty (30) days to what is established in the Contract for the supply by the Supervision of the Construction Drawings, its revisions and modifications and of any definition of technical character.
- (3) Action or omission of Entities or competing Authorities that cause an impact on the financing or execution of the Works.

In the cases of suspension or paralization of works aforementioned that are not imputable to the Contractor, CRM and the Contractor will agree upon an equitable extension of the Contract period.

In the same manner, the corresponding compensation by concept of additional expenses will be determined according to the corresponding items contained in the Bill of Quantities. Additionally, if it is necessary, the equipment depreciation and maintenance rates published by Associated Contractors of America (ACA), besides the incurred cost of personnel and equipment demobilization and new mobilization. It is understood that the content of this Clause will only be applied from the 15th day of the work suspensions or paralizaciones indicated before.

The Contractor could choose to suspend the Works when he did not wish to exercise the faculty granted by item one of this Clause. In such case, he will have the right to an extension of the period that may be applicable.

## **II.1.28 FORCE MAJEURE OR ACT OF GOD**

For all the effects and purposes contained in this Contract, the terms force majeure or Act of God will be understood as the unforeseen event that is not possible to resist, according to the Article 30 of the Ecuadorian Civil Code.

When a circumstance of force majeure or Act of God take place, the interested party must notify in writing to the other party, within ten (10) days after the event has occurred, explaining the effects over the compliance of the Contract with the corresponding documentation attached.

The qualifying of a force majeure or Act of God as requested by the Contractor will be carried out by the Supervision, in a term of fifteen (15) days after receiving the request. In case of non-conformity of the Contractor with the resolution of the Supervision, he could appeal to CRM who will solve what may correspond in an equal term. This term could be extended or renewed if the circumstances so requires it. The appeal must be interposed in a maximum term of fifteen (15) days from the date of the Supervision judgment, if not so, it will be understood that the Contractor will abide by it.

The force majeure or Act of God circumstances, accepted by the Supervision, will be justified motives to extend the contractual terms and will give the Contractor the right to ask indemnity or compensation. Such criterion is validated by reason that the Contractor, facing such circumstance, affronts adverse physical conditions or artificial obstructions that constitute conditions different from his proposal and that he could not have reasonably foreseen by an experienced Contractor. In such event, CRM will pay the additional costs, which the Contractor had assumed by reason of such conditions, including the adequate and reasonable costs consequence of:

- (1) Work executed by the Contractor by instruction of the Supervision, so to overcome the unforeseen adverse situation.
- (2) Actions reasonably adequate, that the Contractor may have adopted in absence of the specific instructions from the Supervision, so to solve the unforeseen adverse situation and verified as a true emergency. Which must be informed to the Supervision in writing within 72 hours product of the emergency.

The Contractor could suspend the executed works while the impediment lasts and will proceed with all diligence to overcome the situation in as little time as possible. The term extension due to work suspension by reason of force majeure or Act of God, duly verified, will give place that CRM and the Contractor will have to subscribe the corresponding agreement.

It is clearly established that it corresponds to the Contractor to perform again the Works or work that were destroyed or affected by the case of force majeure or Act of God. The costs incurred by these works will be borne by CRM, according with the unit and/or lump sum prices and the procedure established in the corresponding conditions of this Draft Contract,

per executed Works and borne by the funds received as payment, that in his favor the corresponding insurance agencies will make, as well as other funds assigned to the Project for emergency cases.

If emergency situations are presented not derived from acts or omissions of the Contractor, that would put in danger the safety of the Works, people or property belonging to third parties, the Contractor will have to take the necessary measures required by the case without having to request previous authorization to CRM; but, will have to immediately report the Supervision of such fact and must confirm it by writing in the seventy two (72) hours following the performing. CRM and the Contractor will determine the term extension by reason of the accepted measures, if that were the case.

The suspensions due to strikes by reason of non-compliance of contractual obligations of the Contractor, damage to the access roads, dealing of the documents and acquisition of equipment and goods, damages to the same, non-compliance of Subcontractors or the like to which are object of this Contract or suspension by the Supervision in order to solve the problems caused by the Contractor, will not be considered as situations not foreseen neither will be considered as force majeure cause. Therefore, these will not give place to term extensions neither to indemnity to the Contractor.

For all purposes pertaining this Contract, the term special risks related with the country to cost and CRM responsibilities are: war, warlike hostilities, invasion, acts of foreign enemies, nuclear risks. Also, the term will include the consequences of rebellion, revolution, strikes, insurrection of military power or usurping the power by it, civil war and, unless restricted to the Contractor and Subcontractor's employees acting under the protection of the laws in force, mutiny, commotion or disorder that negatively incide in the execution of the works in construction process.

If the works or materials or any other property used by the Contractor in order to complete the Works suffered destruction or damage by reason of some of the special risks mentioned before, the Contractor will have the right to receive payments, in base of the net costs plus profit certified by the Supervision due to:

- (1) Destruction of the construction equipment, Works, permanent equipment and materials.
- (2) Repairing damages of the Works.
- (3) Repairing of the materials or any property used by the Contractor that suffered damage.

The funds for the payment of the items mentioned above will come from the insurance policy "All Risk" acquired for the Works.

### **II.1.29 CONFIDENTIAL TREATMENT OF THE CONTRACT**

The data, details and other items contained in the Contract, as well as the knowledge that the Contractor may get directly from the Supervision will be strictly confidential. The Contractor will not be able to use this information in other matters not object of this Contract, neither can he use for publishing, nor communicate it to third parties without the authorization of CRM.

### **II.1.30 PATENTS AND RIGHTS**

The Contractor will have the absolute obligation to answer at his own expense the demands or lawsuits that may initiate against him or against CRM, for violations in the use of patents in the execution of this Contract and will cover, at his own expense, such lawsuits or claims.

### **II.1.31 KNOWLEDGE AND SUBJECTION TO ECUADORIAN LAWS**

The Contractor states to know and expresses his knowledge in regard the Labor Laws, Public Contracting Law and Social Security, Fiscal Stamps, Professional Exercise of Civil Engineering and other Laws and Regulations prevailing in the Republic of Ecuador, that may influence in the correct application of this Contract or determine future responsibilities of the Contractor. These laws are considered incorporated to the Contract in all that may be applicable.

Besides this, the Contractor states under oath that has not incurred in the general and special inabilities mentioned in the Public Contracting Law, in its Articles 60 and 61.

### **II.1.32 WAIVES THE DIPLOMATIC WAYS**

The Contractor expressly waives to use the diplomatic ways, by himself or by a third party, to solve the controversies arisen with motive of the execution of this Contract: as well as waives to request the intervention of any authorized staff member of a Diplomatic Corps of the country where the Contractor is from to deal with the Government of Ecuador or to use a Ecuadorian Diplomat with the Government of the Country where the Contractor is domiciled. Any violation to this regulation could be enough cause to terminate the Contract at fault of the Contractor.

### **II.1.33 CONTROVERSIES**

If some controversies arise with technical or practical aspects during the execution of the Works, the parties will try to reach an agreement. If this is not so, the controversies derived from this Contract will be deal with in front of the competing judges according to the Chapter IX of the VI Title of the Public Contracting Law in force, Chapter XII of its General Regulations, and for what is not provided in them, by the standards of Organic Law of the Public Ministry, Organic Law of the Jurisdictional Function and the Civil Procedure Code.