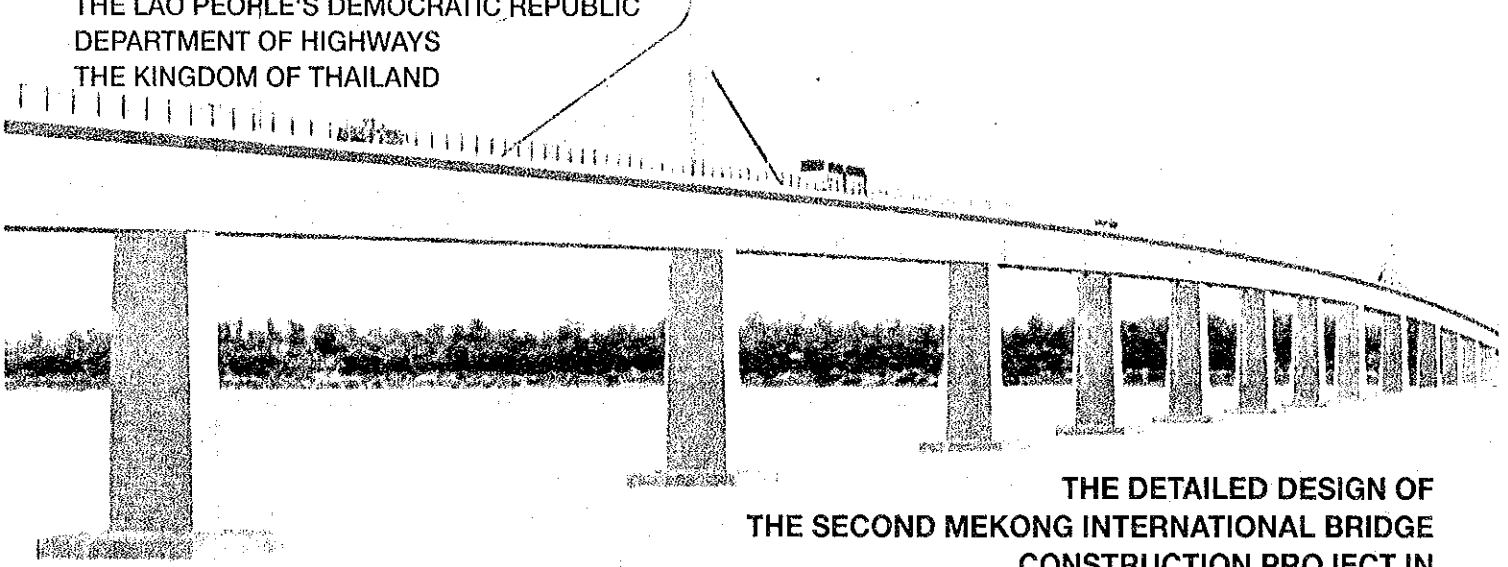




JAPAN INTERNATIONAL COOPERATION AGENCY

MINISTRY OF COMMUNICATION, TRANSPORT, POST AND CONSTRUCTION
THE LAO PEOPLE'S DEMOCRATIC REPUBLIC
DEPARTMENT OF HIGHWAYS
THE KINGDOM OF THAILAND



THE DETAILED DESIGN OF
THE SECOND MEKONG INTERNATIONAL BRIDGE
CONSTRUCTION PROJECT IN
THE LAO PEOPLE'S DEMOCRATIC REPUBLIC AND
THE KINGDOM OF THAILAND

FINAL REPORT

DRAFT BIDDING DOCUMENTS (PACKAGES 3)
VOLUME 1

JUNE 2000



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INVITATION FOR BIDS

Date : *(of issuance of invitation)*

Loan No. :

Contract No. :

1. The Department of Highways, Ministry of Transport and Communications, Government of the Kingdom of Thailand (hereinafter referred to as the "Employer") has applied for an ODA Loan from JAPAN BANK FOR INTERNATIONAL COOPERATION (hereinafter referred to as "the JBIC") in the amount of 4,000 Million Yen toward the cost of the Second Mekong International Bridge Construction Project and intends to apply a portion of the proceeds of the loan to payments under the Contract for Package 3 : Border Control Facilities and Connecting Roads. Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the "Guidelines for Procurement under JBIC ODA Loans". No party other than the Employer shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover the total project cost.
2. JBIC requires that bidders and contractors, as well as the Employers, under contracts funded with JBIC ODA loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy JBIC :
 - (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
 - (b) will recognize a contractor as ineligible, for a period determined by JBIC, to be awarded a contract funded with JBIC ODA Loans if it at any times determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.
3. The Employer invites sealed bids from prequalified eligible bidders for Package 3 – the Construction and Completion of Border Control Facilities (400 m. in length) and Connecting Roads (530 m. in length) on the Thailand side of the river.
4. Additional packages of work for the Bridge, Approach Viaducts and Roads (Package 1) and Border Control Facilities and Connecting Roads on the Lao side (Package 2) shall be executed concurrently with this contract and are excluded from the scope of this bid.

5. A complete set of bidding documents may be purchased by interested eligible bidders upon submission of a written application to the office of the Employer, at Department of Highways, Ministry of Transport and Communications, Sri Ayutthaya Road, Bangkok 10400, Thailand and upon payment of a nonrefundable fee of 10,000 Thai Baht..
6. All bids must be accompanied by a security of 12 Million Japanese Yen or an equivalent amount in a freely convertible currency.
7. The estimated date of award is

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SECTION 1. INSTRUCTIONS TO BIDDERS

A. GENERAL

- 1. Scope of Bid**
- 1.1 The Department of Highways, Ministry of Transport and Communications, Government of the Kingdom of Thailand (herein referred to as "The Employer") wishes to receive bids for the Construction and Completion of the Second Mekong International Bridge, a major two lane bridge which is to cross the Lao-Thai International Border at the Mekong River 5 km. North of the City Savannakhet on the Lao PDR side and 7 km. North of Mukdahan on the Thai side, for Package 3 : Border Control Facilities and Connecting Roads on the Thailand side of the river as defined in these bidding documents.
- 1.2 Additional Packages of work for the Bridge, Approach Viaducts and Roads (Package 1) and Border Control Facilities and Connecting Roads on the Lao side (Package 2) shall be executed concurrently with this contract package and are excluded from the scope of this bid.
- 1.3 The successful bidder will be expected to complete the works within 24 months from the date of commencement of the works.
- 2. Source of Funds**
- 2.1 The Ministry of Transport and Communications, Government of the Kingdom of Thailand has applied for an ODA Loan from JAPAN BANK FOR INTERNATIONAL COOPERATION (hereinafter referred to as "JBIC") in the amount of 4,000 Million Yen toward the cost of the Construction and Completion of the Second Mekong International Bridge and intends to apply a portion of the proceeds of the loan to payments under this contract. Disbursement of an ODA Loan will be subject, in all respects to terms and conditions of the Loan Agreement, including the disbursement procedures and the "Guidelines for Procurement under JBIC ODA Loans". No other parties other than the Employer shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan agreement shall cover the total project cost.
- 3. Eligible Bidders**
- 3.1 This Invitation to Bid is open to prequalified bidders meeting the following requirements:
- (a) a bidder (including all members of a joint venture) shall not be one of the following:
- (i) A firm or an organization which has been engaged by the Employer to provide consulting services for the preparation related to procurement for or implementation of this project;
- (ii) Any association/affiliates (inclusive of parent firm) of a firm or an

organization mentioned in subparagraph (i) above; or

- (iii) A firm or an organization who lends, or temporarily seconds its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

3.2 Bidders shall provide such evidence of their eligibility satisfactory to the Employer as the Employer shall reasonably request.

4. Eligible Materials, Equipment and Services

4.1 The Eligible Source Countries for procurement of all materials, equipment and services to be financed out of the proceeds of the Loan are all countries and areas.

4.2 At the Employer's request, bidders may be required to provide evidence of the origin of materials, equipment, and services.

5. Qualification of the Bidder

5.1 To be qualified for award of Contract, bidders shall:

- (a) Submit a written power of attorney authorizing the signatory of the bid to commit the bidder; and
- (b) Update any information submitted with their applications for pre-qualification, which has changed and continue to meet the minimum threshold criteria set out in the pre-qualification documents.

As a minimum bidder shall update the following information :

- (i) evidence of access to lines of credit and availability of other financial resources,
- (i) financial predictions for the current year and the three following years, including the effect of known commitments,
- (ii) work commitments acquired since pre-qualification,
- (iii) current litigation information, and
- (iv) availability of critical equipment.

- (c) Submit proposals of work methods, scheduling and resourcing in sufficient detail to confirm the bidders capability to complete the works in accordance with the specification and the time for completion.

5.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

- (a) The formation of the Joint Venture shall remain unchanged after prequalification.
- (b) The bid, and in case of a successful bid, the Form of Agreement, shall be signed so as to be legally binding on all partners;
- (c) one of the partners shall be authorized to be in charge; and this authorization

shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;

- (d) the partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the joint venture;
- (e) all partners of the joint venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Agreement (in case of a successful bid); and
- (f) a copy of the agreement entered into by the joint venture partners shall be submitted with the bid.

- 6. **One Bid per Bidder** 6.1 Each bidder shall submit only one bid either by itself, or as a partner in a joint venture. A bidder who submits or participates in more than one bid will be disqualified.
- 7. **Cost of Bidding** 7.1 The bidder shall bear all costs associated with the preparation and submission of its bid and the Employer will in no case be responsible or liable for those costs.
- 8. **Site Visit** 8.1 The bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the bidder's own expense.
8.2 The bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the bidder, its personnel and agents, will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

B. BIDDING DOCUMENTS

- 9. **Content of Bidding Documents** 9.1 The bidding documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Clause 11:

| | | |
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| | | Invitation for Bids |
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- 4 Technical Specifications
- 5 Forms of Bid, Appendix to Bid and Bid Security
- 6 Bill of Quantities
- 7 Form of Agreement
- 8 Forms of Securities
- 9 Schedules of Supplementary Information
- 10 Drawings

9.2 The bidder is expected to examine carefully the contents of the bidding documents. Failure to comply with the requirements of bid submission will be at the bidder's own risk. Pursuant to Clause 28, bids which are not substantially responsive to the requirements of the bidding documents will be rejected.

10. Clarification of Bidding Documents

10.1 A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by fax (hereinafter, the term "fax" is deemed to include electronic transmission such as facsimile, cable and telex) at the Employer's address indicated in the Invitation for Bids. The Employer will respond to any request for clarification which it receives earlier than 28 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry.

11. Amendment of Bidding Documents

11.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the bidding documents by issuing addenda.

11.2 Any addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 9.1, and shall be communicated in writing or by fax to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by fax to the Employer.

11.3 To afford prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may extend the deadline for submission of bids, in accordance with Clause 22.

C. PREPARATION OF BIDS

12. Language of Bid

12.1 The bid, and all correspondence and documents, related to the bid, shall be written in the English language.

13. Documents Comprising the Bid

13.1 The bid submitted by the bidder shall comprise the following:

- (a) Bid Form and Appendix to Bid;

- (b) Bid Security;
- (c) priced Bill of Quantities;
- (d) Power of Attorney
- (e) The information on eligibility and qualification;
- (f) Alternative offers where invited; and
- (g) any other materials required to be completed and submitted by bidders in accordance with these Instructions to Bidders.

The documents listed under Sections 5, 6, and 9 of Sub-Clause 9.1 shall be filled-in without exception, subject to extensions thereof in the same format and to the provisions of Sub-Clause 17.2 regarding the alternative forms of bid security.

14. Bid Prices

- 14.1 Unless stated otherwise in the bidding documents, the Contract shall be for the whole Works as described in Sub-Clause 1.1, based on the schedule of unit rates and prices submitted by the bidder.
- 14.2 The bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.
- 14.3 All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the bidder. The bidder shall be familiar with the Tax laws of the Employer's country.
- 14.4 The rates and prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of Clause 70 of the Conditions of Contract. The bidder shall furnish the indices for the price adjustment formulae in the Appendix to Bid, and shall submit with its bid such other supporting information as required under Clause 70 of the Conditions of Contract.

15. Currencies of Bid and Payment

- 15.1 The unit rates and the prices shall be quoted by the bidder entirely in Thai Baht. Bidders wishing to be paid a proportion of the Contract Price in Japanese Yen shall state the proportion in the Appendix to Bid.
- 15.2 The rates of exchange to be used by the bidder in arriving at the Thai Baht equivalent and the percentage mentioned in paragraph 15.1 above shall be as specified in the Appendix to Bid, and shall apply for all payments under the contracts so no exchange risk will be borne by the successful bidder.

16. Bid Validity

- 16.1 Bids shall remain valid for a period of 180 days after the date of bid opening

specified in Clause 25.

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

17. Bid Security

- 17.1 The bidder shall furnish, as part of its bid, a bid security in the amount of 12 Million Japanese Yen or an equivalent amount in a freely convertible currency.
- 17.2 The bid security shall, at the bidder's option, be in the form of a certified check, bank draft, standby letter of credit or guarantee from a reputable bank. The format of the bank guarantee shall be in accordance with the sample form of bid security included in Section 5; other formats may be permitted, subject to the prior approval of the Employer. Letters of credit and bank guarantees issued as surety for the bid shall be valid for 28 days beyond the validity of the bid.
- 17.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer as nonresponsive.
- 17.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the period of bid validity.
- 17.5 The bid security of the successful bidder will be returned when the bidder has signed the Agreement and furnished the required performance security.
- 17.6 The bid security may be forfeited
- (a) if the bidder withdraws its bid during the period of bid validity; or
 - (b) if the bidder does not accept the correction of its bid price, pursuant to Sub-Clause 29.2; or
 - (c) in the case of a successful bidder, if it fails within the specified time limit to
 - (i) sign the Agreement, or
 - (ii) furnish the required performance security.

**18. Alternative
Proposals by Bidders**

- 18.1 Bidders shall submit offers which comply with the documents, as indicated in the Drawings and Specifications. Alternatives will not be considered. The attention of bidders is drawn to the provisions of Clause 28 regarding the rejection of bids which are not substantially responsive to the requirements of the bidding documents.

19. Pre-Bid Meeting 19.1 A pre-bid meeting shall not be held.
20. Format and Signing of Bid 20.1 The bidder shall prepare one original and 5 copies of the Bid documents comprising the bid as described in Clause 13 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL" and "COPY" as appropriate. In the event of discrepancy between them, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photostats are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Sub-Clauses 5.1 (a) or 5.2 (b), as the case may be. All pages of the bid where entries or amendments have been made shall be initialled by the person or persons signing the bid.
- 20.3 The bid shall contain no alterations, omissions or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialled by the person or persons signing the bid.

D. SUBMISSION OF BIDS

21. Sealing and Marking of Bids 21.1 The bidder shall seal the original and each copy of the bid in an inner and an outer envelope, duly marking the envelopes as "ORIGINAL" and "COPY"
- 21.2 The inner and outer envelopes shall
- (a) Be addressed to the Employer at the following address :
- The Project Director
Department of Highways
Ministry of Transportation and Communications
Sri Ayutthaya Road
Bangkok, 10400.
Thailand
- (b) Bear the following identification :-
- Bid for The Construction and Completion of the Second Mekong International Bridge (Package 3)
 - Bid Reference Number : [insert loan and contract number]
 - DO NOT OPEN BEFORE [time and date for bid opening per Sub-Clause 25.1]
 - Signed Confirmation for Receipt of Bids
- 21.3 In addition to the identification required in Sub-Clause 21.2, the inner envelope

shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared "late" pursuant to Clause 23.

21.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address specified above no later than *[insert time and date, which must be the same as those given in the Invitation for Bids]*.

22.2 The Employer may, at its discretion, extend the deadline for submission of bids by issuing an addendum in accordance with Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

23. Late Bids

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

24. Modification and Withdrawal of Bids

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

24.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 21, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.

24.3 No bid may be modified by the bidder after the deadline for submission of bids.

24.4 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid may result in the forfeiture of the bid security pursuant to Clause 17.

E. BID OPENING AND EVALUATION

25. Bid Opening

25.1 The Employer will open the bids, including modifications made pursuant to Clause 24, in the presence of bidders' representatives who choose to attend, at *[insert time and date]* *[insert address]*. The bidders' representatives who are present shall sign a register evidencing their attendance.

25.2 Envelopes marked "WITHDRAWAL" shall be opened first and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal has

been submitted pursuant to Clause 24 shall not be opened and will be returned to the bidder.

25.3 The bidders' names, the Bid Prices, the total amount of each bid, any discounts, bid modifications and withdrawals, the presence or absence of bid security, and such other details as the Employer may consider appropriate, will be announced and recorded by the Employer at the opening. Any bid price, discount or alternative bid price which is not read out and recorded at bid opening will not be taken into account in bid evaluation. The bidders' representatives will be required to sign the record.

25.4 The Employer shall prepare, besides the record of bid opening, minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 25.3.

26. Process to Be Confidential

26.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.

27. Clarification of Bids

27.1 To assist in the examination, evaluation and comparison of bids, the Employer may, at its discretion, ask any bidder for clarification of its bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by fax, but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 29.

28. Preliminary Examination of Bids and Determination of Responsiveness

28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid (i) meets the eligibility criteria of the JBIC ODA Loans; (ii) has been properly signed; (iii) is accompanied by the required securities; (iv) is substantially responsive to the requirements of the bidding documents; and (v) provides any clarification and/or substantiation that the Employer may require pursuant to Clause 27.

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

28.3 If a bid is not substantially responsive, it will be rejected by the Employer, and may

not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

- 29. Correction of Errors**
- 29.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetic errors will be rectified on the following basis. If there is a discrepancy between the unit rate and the total cost per item that is obtained by multiplying the unit rate and quantity, the unit rate shall prevail and the total cost per item will be corrected unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit rate, in which case the total cost per item as quoted will govern and the unit rate corrected. If there is a discrepancy between the total bid amount and the sum of total costs per item, the sum of the total costs per item shall prevail and the total bid amount will be corrected.
- 29.2 The amount stated in the Form of Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, its bid will be rejected, and the bid security may be forfeited in accordance with Sub-Clause 17.6 (b).
- 30. Conversion to Single Currency**
- 30.1 For comparison of bids, the Bid Price shall first be broken down into the respective amounts payable in various currencies by using the exchange rates specified in accordance with clause 15.
- 30.2 In the second step, the Employer will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Daywork where priced competitively) to Thai Baht at the selling rates established for similar transactions by the Krung Thai Bank on the date for opening Bid Cost Proposals.
- 31. Evaluation and Comparison of Bids**
- 31.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 28 and qualified for award of Contract in accordance with Clause 5.
- 31.2 In evaluating the bids, the Employer will determine for each bid the Evaluated Bid Price by adjusting the Bid Price as follows:
- (a) Making any correction for errors pursuant to Clause 29 ;
 - (b) Excluding Provisional Sums and the provision, if any, for Contingencies in the Summary Bill of Quantities, but including Daywork, where priced competitively;
 - (c) Making an appropriate adjustment for any other acceptable variations or deviations.
 - (d) Applying any discounts offered by the bidder for the award;
 - (e) Converting the amount resulting from applying (a) to (d) above to a single

currency in accordance with Clause 30.

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

31.4 The evaluation of bids shall take into account the price and other commercial features of the offer. In addition, it may also take into account other criteria, such as those in the sample listed below.

- Construction Time Schedule
- Construction Method
- Quality Control System
- Labour and Materials
- Safety Measures

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

31.6 If the bid of the successful bidder is seriously unbalanced in relation to or substantially below the Engineer's estimate of the cost of work to be performed under the Contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the Employer may require that the amount of the performance security set forth in Clause 36 be increased at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the Contract.

F. AWARD OF CONTRACT

32. Award

32.1 Subject to Clause 33, the Employer will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the Lowest Evaluated Bid Price, provided that such bidder has been determined to be (i) eligible in accordance with the provisions of Sub-Clause 3.1; and (ii) qualified in accordance with the provisions of Clause 5. When there was pre-qualification, the latter examination shall be limited to confirming that the bidders' conditions for pre-qualification remain substantially unchanged, but this examination remains a prerequisite for award.

33. Employer's Right to

33.1 Notwithstanding Clause 32, the Employer reserves the right to accept or reject any

- Accept any Bid and to Reject any or all Bids** bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.
- 34. Notification of Award**
- 34.1 Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder by cable confirmed by registered letter that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall name the sum which the Employer will pay the Contractor in consideration of the execution, completion and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").
- 34.2 The notification of award will constitute the formation of the Contract.
- 34.3 Upon the furnishing by the successful bidder of a performance security, the Employer will promptly notify the other bidders that their bids have been unsuccessful.
- 35. Signing of Agreement**
- 35.1 At the same time that the Employer notifies the successful bidder that its bid has been accepted, the Employer will send the bidder the Form of Agreement provided in the bidding documents, incorporating all agreements between the parties.
- 35.2 Within 14 days of receipt of the Form of Agreement, the successful bidder shall sign the Form and return it to the Employer.
- 36. Performance Security**
- 36.1 Within 28 days of receipt of the notification of award from the Employer, the successful bidder shall furnish to the Employer a performance security in an amount of 10 percent of the Contract Price in accordance with the Conditions of Contract. The form of performance security provided in Section 8 of the bidding documents may be used or some other form acceptable to the Employer.
- 36.2 Failure of the successful bidder to comply with the requirements of Clauses 35 or 36 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.

SECTION 2

PART I — GENERAL CONDITIONS

The General Conditions of Contract shall be pages 1 - 38 inclusive of the English version Of the Fourth Edition 1987 (as reprinted in 1992 with amendments) of the Conditions of Contract for Works of Civil Engineering Construction published by the Federation Internationale Des Ingenieurs-Conseils (FIDIC), P.O. Box 86, CH 1000 Lausanne 12, Switzerland. (FAX No. +41 21 653 54 32).

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SECTION 3

PART II — CONDITIONS OF PARTICULAR APPLICATION

Sub-Clause 1.1 Definitions

(a) The JBIC is JAPAN BANK FOR INTERNATIONAL COOPERATION.

(a) (i) The Employer is

The Department of Highways, Government of the Kingdom of Thailand

(a) (iv) The Engineer is _____ [insert name]

Subpara. (a) (iv) is also amended by the addition of the following words after the word "Conditions":

"or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer."

Subpara. (b) (v) of Sub-Clause 1.1 is amended by the addition of the following words at the end:

"The word 'Tender' is synonymous with 'Bid' and the words 'Tender Documents' with 'Bidding Documents'."

In Subpara. (e) (iv), substitute "Sub-Clause 60.13" for "Sub-Clause 60.8".

Sub-Clause 2.1 Engineer's Duties Authority

The Engineer shall obtain the specific approval of the Employer before taking any of the following actions specified in Part I:

- (a) approving subletting of any part of the Works under Clause 4;
- (b) certifying additional cost determined under Clause 12;
- (c) determining an extension of time under Clause 44;
- (d) issuing a variation under Clause 51
- (e) fixing rates or prices under Clause 52.
- (f) Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, the Engineer may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall

forthwith comply, despite the absence of approval of the Employer, with any instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer

**Sub-Clause 5.1
Language and Law**

- (a) The language is the English language.
- (b) The law is that in force in
– Thailand

**Sub-Clause 5.2
Priority of Contract
Documents**

Delete the documents listed 1 - 6 and substitute:

- (1) The Contract Agreement (if completed);
- (2) the Letter of Acceptance;
- (3) Addenda / or Memorandum of Understanding
- (4) the Bid and the Appendix to Bid;
- (5) the Conditions of Contract Part II – Conditions of Particular Application;
- (6) the Conditions of Contract Part I - General Conditions;
- (7) the Specifications;
- (8) the Drawings;
- (9) the priced Bill of Quantities; and
- (10) the Schedules of Supplementary Information.

**Sub-Clause 8.1
Contractor's General
Responsibilities**

Delete second sentence and substitute:

“The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or other defect in the design of or Specification for the Works which he discovers when reviewing the Contract or executing the Works.”

**Sub-Clause 10.1
Performance Security**

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

“The Contractor shall provide security for its proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of a bank guarantee, issued either (a) by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) directly by a foreign bank acceptable to the Employer, as stipulated by the Employer in the Appendix to Bid. The performance security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing.

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

**Sub-Clause 11.1
Inspection of Site**

Delete first paragraph and substitute:

"The Employer shall have made available to the Contractor, before the submission by the Contractor of the Tender, such data on hydrological, hydrographic, sub-surface and sub-river bed conditions as have been obtained by or on behalf of the Employer from investigations undertaken relevant to the Works but the Contractor shall be responsible for his own interpretation thereof."

In the second paragraph under (a) the words shall be deleted and the following substituted:

(a) "the form and nature thereof, including the sub-surface and sub-river bed conditions"

and under (b) the words shall be deleted and the following substituted:

(b) "the hydrological, hydrographic and climatic conditions"

**Sub-Clause 11.2
Access to Data**

Add new Sub-Clause 11.2:

"Data made available by the Employer in accordance with Sub-Clause 11.1 shall be deemed to include data listed elsewhere in the Contract as open for inspection at _____
[insert particulars of the office or offices where such data are sorted].

**Sub-Clause 14.1
Program to be
Submitted**

"The time within which the program shall be submitted shall be 21 days."

**Sub-Clause 14.3
Cash Flow Estimate to
be Submitted**

"The time within which the detailed cash flow estimate shall be submitted shall be 21 days."

**Sub-Clause 15.2
Language Ability of
Contractor's
Representative**

Add the following Sub-Clause 15.2:

"The Contractor's authorized representative shall be fluent in speaking, reading and writing of the English language, to ensure the proper transmission of instructions and information."

**Sub-Clause 15.3
Replacement of
Contractor's
Representative**

Add the following Sub-Clause 15.3:

“Should it be necessary for any reason to replace the Contractor’s Representative, then the replacement person shall have qualifications and experience at least equal to the person to be replaced. The Contractor shall submit the qualifications and experience of the replacement for approval by the Engineer. This requirement shall apply for all named personnel of the Contractor.”

**Sub-Clause 15.4
After Hours Calls**

Add the following Sub-Clause 15.4:

“The Contractor shall, before commencing work, submit to the Engineer the names and telephone numbers of responsible persons who may be contacted for after hours calls during the course of the Contract.”

**Sub-Clause 16.3
Language Ability of
Superintending Staff**

Add the following Sub-Clause 16.3:

“ The Contractor shall ensure that supervisors fluent in speaking, reading and writing of the English language are engaged in areas of major work activities and shall provide on site at all times a sufficient number of competent interpreters in other areas to ensure the proper transmission of instructions and information.”

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

Add the following Sub-Clause 19.1(d):

“comply with all provisions in the loan agreement between JBIC and the Employer with respect to the protection of the environment, which are as follows:

_____.”

**Sub-Clause 20.4
Employer’s Risks**

Sub-Clause 20.4 is amended to read as follows:

The Employer’s risks are

- (a) insofar as they directly affect the execution of the Works in the country where the Permanent Works are to be executed:
 - (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war;
 - (iii) ionizing radiation, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (iv) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

- (v) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of its Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and
- (d) any operation of the forces of nature (insofar as it occurs on the Site) which an experienced contractor:
 - (i) could not have reasonably foreseen, or
 - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures :
 - (a) prevent loss or damage to physical property occurring by taking appropriate measures, or
 - (b) insure against such loss or damage.

**Sub-Clause 21.1
Insurance of Works and
Contractor's
Equipment**

Add the following words at the end of sub-paras. (a) and (b) of Sub-Clause 21.1:

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

**Sub-Clause 21.2
Scope of Cover**

Para. (a) of Sub-Clause 21.2 is amended by deletion of the words “... from the start of work at the Site ...” and by the substitution therefor of the words “... from the first working day after the Commencement Date ...”.

Add the following Sub-Clause 21.2(c):

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

**Sub-Clause 21.4
Exclusions**

Sub-Clause 21.4 is amended to read as follows:

“There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4 paras. (a) (i) to (iv).”

**Sub-Clause 25.1
Evidence and Terms of
Insurances**

Sub-Clause 25.1 is amended by inserting the words “... as soon as practicable after the respective insurances have been taken out but in any case...” before the words “...prior to the start of work at the Site...”.

**Sub-Clause 28.2
Royalties**

Add the following sentence to Sub-Clause 28.2:

"The Contractor shall also be liable for all payments or compensation, if any, levied in relation to the dumping of part or all of any such materials."

**Sub-Clause 29.2
Waterway Obstructions**

Add the following Sub-Clause 29.2:

"Should any plant (floating or otherwise) belonging to or hired by the Contractor or any sub-contractor or any person employed by the Contractor or by any sub-contractor or any materials or things therein sink from any cause whatsoever it shall immediately be reported by the Contractor to the competent authorities and the Engineer, and the Contractor shall forthwith and with dispatch at his own cost raise and remove any such plant, material or things or otherwise deal with the same as the Engineer or the competent authorities may direct.

The fact that such sunken plant, materials or things are insured or have been declared a total loss or do not represent any further value shall not absolve the Contractor from his obligations under this Clause to raise and remove the same"

**Sub-Clause 29.3
Lights, Markers and
Buoys**

Add the following Sub-Clause 29.3:

"Until such sunken plant, materials or things have been raised and removed the Contractor shall set such buoys and display at night such lights and do all such things for the safety of others as may be required by the competent authorities or by the Engineer."

**Sub-Clause 29.4
Contractor Liable**

Add the following Sub-Clause 29.4:

"In the event of the Contractor not carrying out the obligations imposed on him by this Clause, the Employer may buoy and light such plant, materials or things and raise and remove the same without prejudice to the right of the Employer to hold the Contractor liable and all expenses consequent thereon and incidental thereto shall be borne by the Contractor and shall be recoverable from him as a debt by the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor."

**Sub-Clause 33.2
Clearance of
Contractor's Facilities**

Add the following Sub-Clause 33.2:

"On or before expiry of the Defects Liability Period the Contractor shall clear away all his temporary facilities including but not limited to offices, camps, storage and holding yards, workshops, crushing and mixing plant, diversion and haul roads so that the land is returned to at least its previous condition and, in the case of agricultural land, potential productivity. Clearance shall include but not be limited to tasks such as the removal of unwanted structures, removal of metallic and concrete debris, removal and disposal of any soil contaminated by diesel, bitumen or other polluting material, ripping to relieve compaction, grading, replacement of topsoil, and turfing and grassing as appropriate. Where improvements have been made such as land filling or installation of boreholes or construction of boat landings these may be retained subject to the agreement of the landowner. The Employer reserves the right to

inspect the site of any facilities established or used by the Contractor in connection with the Works and to undertake any corrective measures necessary to restore the land, and to recover the cost from monies due or to become due to the Contractor.”

**Sub-Clause 34.2
Rates of Wages and
Conditions of Labor**

The Contractor shall pay rates of wages and observe conditions of labour not less favorable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or conditions of labour so established, the Contractor shall pay rates of wages and observe conditions of labour which are not less favorable than the general level of wages and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

**Sub-Clause 34.3
Employment of Persons
in the Service of Others**

The Contractor shall not recruit or attempt to recruit his staff and labour from amongst persons in the service of the Employer or the Engineer.

**Sub-Clause 34.4
Repatriation of Labor**

The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they shall have been returned to the place of recruitment or their domicile.

**Sub-Clause 34.5
Housing for Labor**

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labor, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire-fighting equipment, air-conditioning, cookers refrigerators, furniture and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the Site reinstated to its original condition, all to the approval of the Engineer.

**Sub-Clause 34.6
Accident Prevention
Officer ; Accidents**

The Contractor shall have on his staff on Site an officer dealing only with questions regarding the safety and protection against accidents of all staff and labor. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents.

**Sub-Clause 34.7
Health and Safety**

Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labor and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first-aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements. Such arrangements shall include provision of insect screens, health checks and education in health and safety.

**Sub-Clause 34.8
Measures Against Insect
and Pest Nuisance**

The Contractor shall at all times take the necessary precautions to protect all staff and labor employed on the Site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance caused by the same. The Contractor shall provide his staff and labor with suitable prophylactics for the prevention of malaria, and take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the Engineer. The Contractor shall warn his staff and labor of the dangers of bilharzia and wild animals.

**Sub-Clause 34.9
Epidemics**

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the local medical or sanitary authorities, for the purpose of dealing with and overcoming the same.

**Sub-Clause 34.10 Burial
of the Dead**

The Contractor shall make any necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in Thailand. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regard to burial of any of his local employees who may die while in his employment.

**Sub-Clause 34.11
Supply of Foodstuffs**

The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff and labor, or his Subcontractors, for the purposes of or in connection with the Contract.

**Sub-Clause 34.12
Supply of Water**

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labor.

**Sub-Clause 34.13
Alcoholic Liquor or
Drugs**

The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances, and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents, staff or labor.

**Sub-Clause 34.14
Arms and Ammunition**

The Contractor shall not give, barter, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid

**Sub-Clause 34.15
Festivals and Religious
Customs**

The Contractor shall in all dealings with his staff and labor have due regard to all recognized festivals, days of rest and religious and other customs.

**Sub-Clause 34.16
Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour and for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same. Disorderly conduct shall include harvesting of natural resources such as firewood or fish to the detriment of pre-existing conditions

**Sub-Clause 35.1
Returns of Labour and
Contractor's
Equipment**

Add the following paragraph to Sub-Clause 35.1:

"In addition to the requirements of Clause 35.1 the Contractor shall supply, in a form agreed with the Engineer all records that may be required by the Engineer relating to dates and details of all engineering operations, rainfall, temperature and other weather conditions, river levels and a daily return showing in detail by trades and staff, the number of men employed, the work on which they are engaged, the plans on site, the hours worked and any other particulars in relation thereto that he may additionally require."

**Sub-Clause 35.2
Records of Safety and
Health**

The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

**Sub-Clause 35.3
Reporting of Accidents**

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means.

**Sub-Clause 45.1
Restriction on Working
Hours**

Add the following sentence to Sub-Clause 45.1:

"Provided also that the Contractor shall have the option to work continuously by day and by night and on locally recognized holidays or days of rest with the prior approval of the Engineer. If approval is given by the Engineer for works to proceed outside normal work days and hours, it may be conditional upon any related additional supervision costs being borne by the Contractor."

**Sub-Clause 48.5
Prevention from Testing**

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly. Provided always that the Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

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

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

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

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

When progress in respect of Plant has been suspended under Clause 40, the Contractor's obligations under this Clause shall not apply to any defects occurring more than one year after the Time for Completion established on the date of the Letter of Acceptance.

**Sub-Clause 52.1
Valuation of Variations**

Add final sentences as follows:

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

**Sub-Clause 52.2
Power of Engineer to
Fix Rates**

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

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

**Sub-Clause 52.2
Power of Engineer to
Fix Rates**

Add as a third paragraph:

"Provided further that no change in the rate or price for any item contained in the Contract shall be considered unless such item accounts for an amount more than 2 percent of the Contract Price as stated in the Letter of Acceptance and the actual quantity of work executed under the item exceeds or falls short of the quantity set out in the Bill of Quantities by more than 25 percent."

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

Add a final sentence as follows:

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

**Clause 60
Certificates and
Payment**

Clause 60 of the General Conditions is deleted and the following Sub-Clauses 60.1 to 60.14 are substituted therefor:

**Sub-Clause 60.1
Monthly Statements**

Disbursement procedures of JBIC ODA Loans shall be applied for disbursement of the proceeds of JBIC ODA Loans for eligible payment under this contract. The Contractor shall submit a statement in six copies to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (a) the estimated contract value of the Temporary and Permanent Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price in which the contract is payable;
- (b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price;
- (c) the estimated contract value at the unit rates and prices included in the Contract of the Temporary and Permanent Works for the month in question, in the various currencies of the Contract Price, obtained by deducting (b) from (a);
- (d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of foreign and local currencies, pursuant to Clause 52;
- (e) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate, indicating the amounts of foreign and local currencies as determined from the Daywork Schedule of the Bill of Quantities;

- (f) amounts reflecting changes in cost and legislation, pursuant to Clause 70, expressed in the relevant amounts of foreign and local currencies;
- (g) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts, in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (h) any amount to be withheld under the provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in foreign and local currencies due under paragraphs 60.1 (c), (d), (e) and (f);
- (i) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.8; and
- (j) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

**Sub-Clause 60.2
Monthly Payments**

The said statement shall be approved or amended by the Engineer in such a way that, in the Engineer's opinion, it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within 28 days of receipt of the monthly statement referred to in Sub-Clause 60.1, the Engineer shall determine the amounts due to the Contractor and shall issue to the Employer and the Contractor a certificate herein called "Interim Payment Certificate", certifying the amounts due to the Contractor.

Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Bid.

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

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

With respect to materials and Plant brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall (i) receive a credit in the month in which these materials and Plant are brought to the Site and (ii) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the Engineer in accordance with the following provisions:

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction:
 - (i) the materials and Plant are in accordance with the specifications for the Works;

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

**Sub-Clause 60.4
Place of Payment**

Payments to the Contractor by the Employer shall be made in the currencies in which the Contract Price is payable, into a bank account or accounts nominated by the Contractor.

**Sub-Clause 60.5
Retention Money**

A retention amounting to 10 percent of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 (h) shall be made by the Engineer in the first and following Interim Payment Certificates.

**Sub-Clause 60.6
Payment of Retention
Money**

Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.

At the request on the Contractor, the second half of the Retention Money may also be released at the issue of the Taking-Over Certificate provided a bank guarantee is provided by the Contractor for an amount equal to half the Retention Money for the period from the issue of the Taking-Over Certificate to the expiry of the Contract Period. The bank guarantee shall be in a form and from a source acceptable to the Employer.

Upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor. Provided that, in the event of different Defects Liability Periods being applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression "expiration of the Defects Liability Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

**Sub-Clause 60.7
Advance Payment**

- (a) The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilization in respect of the Works in an amount equivalent to 10 percent of the Contract Price named in the Letter of Acceptance, payable in the proportions of foreign and local currencies of the Contract Price. Payment of such advance amount will be due under separate certification by the Engineer after (i) execution of the Form of Agreement by the parties hereto; (ii) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and (iii) provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to paragraph (b) below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.

- (b) The advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached 30 percent of the Contract Price less Provisional Sums, and shall be made at the rate of 20 percent of the amount of all Interim Payment Certificates in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 80 percent of the Contract Price has been certified for payment.

**Sub-Clause 60.8
Time for Payment**

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 56 days after the Contractor's monthly statement has been submitted to the Engineer for certification or, in the case of the Final Certificate pursuant to Sub-Clause 60.13, within 84 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification.

**Sub-Clause 60.9
Correction of
Certificates**

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificates which has been issued by the Engineer, and shall have authority, if any work is not being carried out to the satisfaction of the Engineer, to omit or reduce the value of such work in any Interim Payment Certificate.

**Sub-Clause 60.10
Statement at
Completion**

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer six copies of a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer,

- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate;
- (b) any further sums which the Contractor considers to be due; and
- (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.

**Sub-Clause 60.11
Final Statement**

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,

- (a) the value of all work done in accordance with the Contract; and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

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

If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall issue to the Employer an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute shall then be settled in accordance with Clause 67. The Final Statement shall be agreed upon settlement of the dispute.

**Sub-Clause 60.12
Discharge**

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.13 has been made and the performance security referred to in Sub-Clause 10.1 has been returned to the Contractor.

**Sub-Clause 60.13
Final Payment
Certificate**

Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Payment Certificate stating

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

**Sub-Clause 60.14
Cessation of Employer's
Liability**

The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.10.

**Sub-Clause 63.1
Default of Contractor**

Delete the last paragraph of Sub-Clause 63.1 and substitute:

“then the Employer may, after giving 14 days notice to the Contractor, enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Contractor’s Equipment, Plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Contractor’s Equipment, Plant, Temporary Works, and unused Plant and materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.”

**Sub-Clause 63.2
Valuation at Date of
Termination / Expulsion**

Alter the heading of Sub-Clause 63.2 by substituting “Valuation at Date of Expulsion” for “Valuation at Date of Termination”

In Sub-Clause 63.2, delete the word “termination” on the second and fifth lines and substitute “expulsion”

**Sub-Clause 63.3
Payment after
Termination / Expulsion**

Alter the heading of Sub-Clause 63.3 by substituting “Payment after Expulsion” for “Payment after Termination”

In Sub-Clause 63.3, delete the words “terminates the Contractor’s employment” on the first line and substitute “shall enter and expel the Contractor”

**Sub-Clause 63.4
Assignment of Benefit
of Agreement**

In Sub-Clause 63.4, delete the word “termination” on the second line and substitute “expulsion”

**Sub-Clause 65.2
Special Risks**

Sub-Clause 65.2 is amended to read as follows:

“The Special Risks are the risks defined under para. (a), subparas. (i) to (v) of Sub-Clause 20.4.”

**Sub-Clause 67
Settlement of Disputes**

These Draft Bidding Documents include three versions of Clause 67, Settlement of Disputes, which are included in Section XI of the SAMPLE BIDDING DOCUMENTS UNDER JBIC ODA LOANS (PROCUREMENT OF CIVIL WORKS November 1999). The Employer should select which version to use in accordance with the following:

Version 1 provides for disputes between the parties to be referred to a Disputes Adjudication Board consisting of three members.

Version 2 is essentially identical to Version 1, except that it provides for such disputes to be referred to a single Disputes Adjudication Expert.

The third option remains **Clause 67 as included in the FIDIC General Conditions** in which the Engineer acts as arbiter of first instance in the disputes which may arise between the parties, provided that **the Engineer must be independent from the Employer**

Version 1 is recommended for contracts estimated to cost more than 5 billion Japanese Yen. For contracts smaller than 5 billion Japanese Yen, Employers may select any of the three versions of Clause 67, depending on their regulatory framework and preferences.

**Sub-Clause 67.1
Engineer's Decision**

The procedure for settlement of disputes is the one stipulated in the Appendix to Bid. If the Employer selects either Version 1 or Version 2, then the relevant clauses from Section XI of the SAMPLE BIDDING DOCUMENTS UNDER JBIC ODA LOANS (PROCUREMENT OF CIVIL WORKS November 1999) shall be incorporated in and be part of these Conditions of Particular Application.

**Sub-Clause 68.2
Notice to Employer and
Engineer**

For the purposes of this Sub-Clause the respective addresses are:

(a) The Employer:
Vientiane, Lao PDR
– Loans Control Division, Department of Highways, Sri
Ayutthaya Road, Bangkok, 10400

(b) The Engineer: _____ [insert address]

**Clause 69
Default of Employer**

In Sub-Clauses 69.1, 69.4 and 69.5, substitute "Sub-Clause 60.8" for "Sub-Clause 60.10".

**Sub-Clause 69.1(a)
Default of Employer**

In Sub-Clause 69.1 (a), substitute "56 days" for "28 days".

**Sub-Clause 69.1(d)
Economic Dislocation**

Sub-Clause 69.1(d) is deleted

**Sub-Clause 69.3
Payment on
Termination**

Delete from "but, in addition to the payments specified.. " to the end of the sub-clause.

**Clause 70
Changes in Cost and
Legislation**

Delete Clause 70 in its entirety and substitute:

**Sub Clause 70.1
Price Adjustment**

"The amounts payable to the Contractor and valued at base rates and prices pursuant to Sub-Clause 60.1 (d), (e) and (f) shall be adjusted in respect of the rise or fall in the cost of labor, Contractor's Equipment, Plant, materials and other inputs to the Works, by the addition or subtraction of the amounts determined by the formulae prescribed in this Clause.

**Sub-Clause 70.2
Other Changes in Cost**

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

**Sub-Clause 70.3
Adjustment Formulae**

The amount to be added to or deducted from the Adjustment Interim Payment Certificates in respect of changes in cost and legislation shall be determined for the Lao Kip and Thai Baht portions only from separate formulae as described below :

(1) Applicable Range for Price Adjustment is as follows:

| | | |
|---------|------------------------------------|--|
| Case -1 | $0.96 < Kn, \text{ or } Bn < 1.04$ | No payment of adjustment will be made |
| Case -2 | $Kn, \text{ or } Bn > 1.04$ | Adjustment will be $(Kn, \text{ or } Bn - 1.04)$ |
| Case -3 | $Kn, \text{ or } Bn < 0.96$ | Adjustment will be $(0.96 - Kn, \text{ or } Bn)$ |

(2) Price adjustment will be claimed at the month after relevant indices have been published, but shall not be claimed 56 days after the Taking-Over Certificate has been issued in accordance with 48.1 of the Conditions of Contract.

Adjustment Formulae of Kip Portion

Kn is the adjustment factor to be applied to the estimated total value of the Work carried out in the month "n" in the currency of Kip.

$$Kn = a + b(Ln/Lo) + \{c(Mn/Mo + d(An/Ao) + g(Sn/So) + h(Cn/Co) + e(En/Eo)\} (Zbn/Zbo) + f(Fn/Fo)$$

Where b, c, d, e, f, g and h are coefficients representing the estimated proportion of each element in the total Kip Portion proposed by the Contractor and approved by the Employer.

And a is representing the non adjustable portion in the payment,
 $a + b + c + d + e + f + g + h = 1.00$

- (1) Lo is the decreed minimum wage in Kips for workers in Lao PDR, as given by the Ministry of Labour and Social Welfare.
- (2) M is the unweighted average of the indices for construction materials ("M"), steel ("S"), and cement ("C"), from the monthly construction price escalation factors published by the Thai Ministry of Commerce.
- (3) A is the index for asphalt ("A") from the monthly construction price escalation factors published by the Thai Ministry of Commerce.
- (4) E is the index for equipment ("E") from the monthly construction price escalation factors published by Thai Ministry of Commerce.
- (5) F is the retailed price of diesel (gasoline) per litre in Savannakhet as given by the Lao State Fuel Company.
- (6) Zbn is the number of Lao Kips equivalent to one Baht on the 15th day of month "n", Zbo is the number of Lao Kips equivalent to one Baht the 28 days before the closing date for bidding.
 "Equivalent" value of currencies shall be determined by using the bank's selling price for currencies at the Banque pour le Commerce Exterieur Lao (BCEL), Vientiane at the close of business on the relevant day or, if the bank be closed on that day, on the next banking day. If BCEL does not regularly issue a selling price for a particular currency, an alternative source for the price shall be agreed.

**Adjustment Formulae
of Baht Portion**

B_n is the adjustment factor to be applied to the estimated total value of the Work carried out in the month "n" in the currency of Baht .

$$B_n = a + b (C_n/C_o) + c (D_n/D_o) + d (F_n/F_o) + e (G_n/G_o) + f (H_n/H_o) + g (I_n/I_o) + H (J_n/J_o) + I (K_n/K_o).$$

Where b,c,d,e,f,g,h and i are coefficients representing the estimated proportion of Each element in the total Baht Portion proposed by the Contractor and approved by the Employer, and a is representing the non adjustable portion in the payment. And a+b+c+d+e+f+g+h+i=1.00

C,D,F,G,H,I,J and K are the necessary price index taken from the publication of Thai Ministry of Commerce as shown below.

- C: General Nation Consumer Index
- D: Equipment and Accessories Price Index
- F: High Speed Diesel Fuel Oil Price Index
- G: Asphalt Price Index
- H: Cement Price Index
- I: Construction Material Produced in Thailand Price Index
(excluding Steel and Cement)
- J: Steel Price Index
- K: Any Other Price Index if Necessary

**Sub-Clause 70.4
Sources of Indices**

The sources of indices shall be those listed in the Appendix to Bid, as approved by the Engineer.

**Sub-Clause 70.5
Base, Current and
Provisional Indices**

The base cost indices or prices shall be those prevailing on the day 28 days prior to the closing and date for submission of bids. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

**Sub-Clause 70.6
Adjustment after
Completion**

If the Contractor fails to complete the whole of the Works within the time for completion prescribed under Clause 43, adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the Employer, provided that if an extension of time is granted pursuant to Clause 44 the above provision shall apply only to adjustments made after the expiry of such extension of time.

**Sub-Clause 70.7
Weightings**

The weightings for each of the factors of cost given in the Appendix to Bid shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or ordered under Clause 51 or for any other reason.

**Sub-Clause 70.8
Subsequent Legislation**

If, after the date 28 days prior to the latest date for submission of bids for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the Contractor, other than under the preceding Sub-Clauses of this Clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the Price Adjustment - Formulae in accordance with the provisions of Sub-Clauses (1) to (7) of this Clause."

**Sub-Clause 72.2
Currency Proportions**

Delete the words from "...prevailing..." to the end of the sentence, and substitute:

"rates prevailing for similar transactions, as determined, from the sources stated in the Appendix to Bid, on the date 28 days prior to the deadline for submission of tenders."

Clause 73 Taxation

**Sub-Clause 73.1
Foreign Taxation**

The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

**Sub-Clause 73.2
Local Taxation**

The prices bid by the Contractor shall include all customs duties, import duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulations in being as of the date 28 days prior to the closing date for submission of bids in the Employer's country on the Contractor's Equipment, Plant, materials and supplies - (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's country on profits made by him in respect of the Contract. The Contractor shall be deemed to be familiar with the tax laws in the Employer's country.

**Sub-Clause 73.3 Income
Taxes on Staff**

The Contractor's staff and labor will be liable to pay personal income taxes in the Employer's country in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

**Sub-Clause 74.1
Bribes**

If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favor or disfavor to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and expel the Contractor and the provisions of Clause 63 hereof shall apply as if such entry and expulsion had been made pursuant to that Clause.

**Sub-Clause 75.1
Termination of
Contract for
Employer's
Convenience**

The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving 56 days prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor

- (a) Shall proceed as provided in Sub-Clause 65.7; and
- (b) shall be paid by the Employer as provided in Sub-Clause 65.8.

**Sub-Clause 76.1
Restrictions on
Eligibility**

(a) Any Plant or services which will be incorporated in or required for the Works, as well as the Contractor's Equipment and other supplies, shall have its origin in eligible source countries as listed in Section 5.

(b) For the purposes of this clause, "origin" means the place where the equipment were mined, grown, produced, or manufactured, or from which the services are provided.

(c) The origin of Goods and Services is distinct from the nationality of the Supplier.

**Sub-Clause 77.1
Joint and Several
Liability**

If the Contractor is a joint venture of two or more persons, all such persons shall be joint and severally bound to the Employer for the fulfillment of the terms of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

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

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

**Tender, Appendix and
Agreement**

The Tender, Appendix and Agreement of Section 5 of this document shall apply.

**Editorial Amendments
in 1998 and 1992**

These are already incorporated in the text.

JICA

