

**SECTION 5.**

**PART II : CONDITIONS OF PARTICULAR  
APPLICATION**

## Part II : Conditions of Particular Application

### Sub-Clauses 1.1 Definitions

(a) (i) The Employer is the party stipulated in the Appendix to Bid.

(a) (iv) The Engineer is the party stipulated in the Appendix to Bid.

Amend sub-PARA. (a)(iv) also by adding the following words after the word "Conditions":

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

Add the following item (vi) to SUBPARA 1.1(a)

(vi) "Funding Agency" (FA) means the body which provides financial assistance to the Government of Indonesia as stipulated in the Appendix to Bid.

Amend sub-PARA. (b) (v) of Sub-Clause 1.1 by the adding the following words at the end:

"The word 'tender' is synonymous with 'bid', and the word 'Appendix to Tender' with 'Appendix to Bid,' and the words 'tender documents' with 'bidding documents'."

### Sub-Clauses 2.1 Engineer's Duties and Authority

With reference to Sub-Clause 2.1 (b), the following provision shall also apply:

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

(a) consenting to the subletting of any part of the Works under Clause 4;

(b) certifying additional cost determined under Clause 12;

(c) determining an extension of time under Clause 44;

(d) issuing a variation under Clause 51, except:

(i) in an emergency situation, as reasonably determined by the Engineer; or

(ii) if such variation would increase the Contract Price by less than the amount stated in the Appendix to Bid; or

(e) fixing rates or prices under Clause 52.

### Sub-Clause 5.1 Language and Law

The language is stipulated in the Appendix to Bid.

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

**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) the Bid and the Appendix to Bid;
- (4) the Conditions of Contract, Part II;
- (5) the Conditions of Contract, Part I;
- (6) the Specifications;
- (7) the Drawings;
- (8) the priced Bill of Quantities; and
- (9) other documents, as listed in the Appendix to Bid.

**Sub-Clause 10.1**  
**Performance**  
**Security**

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

“The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of a bank guarantee or performance bond, as stipulated by the Employer in Appendix to Bid. The performance security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. The Contractor shall notify the Engineer when providing the performance security to the Employer.

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

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

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the 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 joint operation shall be in the name of the joint operation.”

**Sub-Clause 10.2**  
**Validity of the**  
**Performance**  
**Security**

The performance security shall be valid until a date 28 days from the date of issue of the Taking-Over Certificate in the case of bank guarantee, and one year from such date of issue in the case of a performance bond. The security shall be returned to the Contractor within 14 days of expiration.



- properties of any explosive nuclear assembly or nuclear component thereof;
- (iv) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
  - (v) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
  - (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and
  - (d) any operation of the forces of nature (insofar as it occurs on the Site) which an experienced contractor:
    - (i) could not have reasonably foreseen, or
    - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:
      - (A) prevent loss or damage to physical property from occurring by taking appropriate measures, or
    - (vi) 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-PARA. (a) and immediately before the last word of sub-PARA. (b) of Sub-Clause 21.1  
"it being understood that such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred,"
- Sub-Clause 21.2**  
Scope of Cover
- Amend sub-PARA. (a) of Sub-Clause 21.2 by deleting the words "from the start of work at the Site" and by substituting therefore the words "from the first working day after the Commencement Date."
- Sub-Clause 21.2**  
Scope of Cover
- Add the following as Sub-Clause (c) under Sub-Clause 21.2:
- (c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.
- Sub-Clause 21.4**  
Exclusions
- Amend Sub-Clause 21.4 to read as follows:  
"There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risk listed under Sub-Clause 20.4 sub PARA. (a) (i) to (iv) of the Conditions of Particular Application."

- Sub-Clause 25.1**  
Evidence and  
Terms of  
Insurance's
- Amend Sub-Clause 25.1 by inserting the words "as soon as practicable after the respective insurance's have been taken out but in any case" before the words "prior to the start of work at the Site."
- Sub-Clause 25.5**  
Source of  
Insurance
- Add the following Sub-Clause 25.5:  
"The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to in Clauses 21, 23, and 24) with insurers from any eligible source country as defined in the FA *Guidelines*, which have been determined to be acceptable to the Employer."
- Sub-Clause 36.1**  
Quality of  
Materials, Plant,  
Supplies, and  
Workmanship
- Add the following paragraph at the end of Sub-Clause 36.1:  
"The Contractor is encouraged, to the extent practicable and reasonable, to use materials, Contractor's Equipment, Plant, and supplies from sources within the country of the Employer, as stipulated in the Appendix to Bid."
- Sub-Clause 45.1**  
Restriction on  
Working Hours
- Delete Sub Clause 45.1 and Substitute :  
"Subject to any provision to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on locally recognized holiday or days of rest."
- 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
- Add the following Sub-Clause 49.5  
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 renewal had been taken over on the date they were completed. The Defect Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the works is affected the Defects Liability Period shall be extended only for that part. In neither case shall the Defects Liability Period extend beyond the

number of years from the date of taking over, as specified in the Appendix to Bid.

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

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

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

Add a final sentences, as follows:

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

Clause 54 Deleted

Contractor's  
Equipment,  
Temporary  
Works, and  
Materials

Sub-Clause 55.2 Add the following Sub-Clause 55.2

Omissions of  
Quantities

Items of the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

Clause 60  
Certificates and  
Payment

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

Sub-Clause 60.1  
Monthly  
Statements

The Contractor shall submit a statement in the number of copies specified in the Appendix to Bid to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

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



- (g) amounts reflecting changes in cost and legislation, pursuant to Clause 70, expressed in the relevant amounts of foreign and local currencies;
- (h) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts, in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (i) any amount to be withheld under the retention provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in foreign and local currencies due under paragraphs 60.1(d), (e), (f), and (g);
- (j) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.7; and
- (k) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

**Sub-Clause 60.2  
Monthly  
Payments**

The said statement shall be approved or amended by the Engineer in such a way that, in his opinion, it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within 14 days of receipt of the monthly statement referred to in Sub-Clause 60.1, the Engineer shall determine the amounts due to the Contractor and shall deliver to the Employer and the Contractor and 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 retention and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Tender. However, in such case, the unpaid certified amount will be added to the next interim payment, and the cumulative unpaid certified amount will be compared to the minimum amount of interim payment.

Notwithstanding the terms of this clause or any other clause of the Contract, no amount will be certified by the Engineer for payment until the performance security has been provided by the Contractor and approved by the 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 (a) receive a credit in the month in which these materials and Plant are brought to the Site and (b) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the Engineer in accordance with the following provisions:

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

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

**Sub-Clause 60.4**  
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 the percentage stipulated in the Appendix to Bid of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 (i) shall be made by the Engineer in the first and following Interim Payment Certificates.

**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. The Contractor may substitute the remaining retention money with an on-demand bank guarantee in a form, and from a source, acceptable to the Employer.

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

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

**Sub Clause 60.7**  
Advance  
Payment

The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilization in respect of the Works in an amount named in the Letter of Acceptance, payable in the proportions of foreign and local currencies of the Contract Price, but in no event exceeding the amount stated in the Appendix to Bid. Payment of such advance amount will be due under separate certification by the Engineer after (a) execution of the Form of Agreement by parties hereto; (b) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and (c) provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to the paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.

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

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

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 42 days after the Contractor's monthly statement has

been submitted to the Engineer for certification or, in the case of the Final Payment Certificate pursuant to Sub-Clause 60.13, within 84 days after the Final Statement and written discharge have been submitted to the Engineer for certification. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest compounded monthly at the rate(s) stated in the Appendix to Bid upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69 or otherwise.

**Sub-Clause 60.9**  
Correction of  
Certificates

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

**Sub-Clause 60.10**  
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 a Statement at Completion in the number of copies specified in the Appendix to Bid with supporting documents showing in detail, in the form approved by the Engineer,

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

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

**Sub-Clause 60.11**  
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 a draft final statement in the number of copies stipulated in the Appendix to Bid with supporting document showing in detail, in the form approved by the Engineer,

- (a) the value of all work done in the 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 Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the

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

- Sub-Clause 60.12**  
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 deliver 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 under Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.
- Sub-Clause 60.14**  
Cessation of Employer's Liability
- 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 65.2**  
Special Risks
- Amend Sub-Clause 65.2 to read as follows: "The special Risk are the risks defined under PARA. (a), SUBPARA. (i) to (v) of Sub-Clause 20.4."
- Sub-Clause 67.1**  
Disputes Review Board
- Sub Clause 67.1 is substituted by the following:
- "If any dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of the Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred to the Disputes Review Board ("the Board").
- "The Board shall be established by the signing of a Board Member's Declaration of Acceptance (as required by paragraph 12 of Annex A to these Conditions of Particular Application) by all three Board Members.

"The Board shall comprise three Members experienced with the type of construction involved in the Works and with the interpretation of contractual documents. One Member shall be selected by each of the Employer and the Contractor and approved by the other. If either of these Members is not so selected and approved within 28 days of the date of the Letter of Acceptance, then upon the request of either or both parties such Member shall be selected as soon as practicable by the Appointing Authority specified in the Appendix to Bid. The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, then upon the request of either or both parties such third Member shall be selected promptly by the same Appointing Authority specified in the Appendix to Bid who shall seek the approval of the proposed third Member by the parties before selection but, failing such approval, nevertheless shall select the third Member. The third Member shall serve as Chairman of the Board.

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

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

"If either the Employer or the Contractor is dissatisfied with any Recommendation of the Board, or if the Board fails to issue its Recommendation within 56 days after receipt by the Chairman of the Board of the written Request for Recommendation, then either the Employer or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall

establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

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

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

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

"Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every decision of the Engineer unless and until the same shall be revised as result of the operation of this Sub-Clause 67.1 or, as hereinafter provided, in an arbitral award."

**Sub-Clause 67.2**

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

**Sub-Clause 67.3  
Arbitration**

Sub-Clause 67.3 is modified to read as follows:

"Any dispute in respect of which the Recommendation, if any, of the Board has not become final and binding shall be finally settled by arbitration under the UNCITRAL Arbitration Rules. The arbitral tribunal shall have full power to open up, review and revise any decision, opinion, instruction, certificate, or valuation of the Engineer and any Recommendation(s) of the Board related to the dispute.

"Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the Board for the purpose of obtaining its Recommendation(s) pursuant to Sub-Clause 67.1. No Recommendation shall disqualify any Board Member from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

"Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer, the Contractor and the Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

"The appointing authority shall be Badan Arbitrasi Nasional. The place of arbitration shall be Semarang and the language of arbitration shall be English.

<p><b>Sub-Clause 67.4</b> Failure to Comply with Recommendation</p>	<p>Sub-Clause 67.4 is amended to read as follows:</p> <p>"Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-clause 67.1 shall not apply to any such references."</p>
<p><b>Sub-Clause 68.2</b> Notice to Employer and Engineer</p>	<p>For the purposes of this Sub-Clause, the addresses are those specified in the Appendix to Bid</p>
<p><b>Clause 69</b> Default of Employer</p>	<p>In Sub-Clauses 69.1, 69.4, and 69.5, substitute "Sub-Clause 60.8" for "Sub-Clause 60.10."</p>
<p><b>Sub-Clause 69.1 (d)</b> Economic Dislocation</p>	<p>Sub-Clause 69.1 (d) is deleted</p>
<p><b>Sub-Clause 69.3</b> Payment on Termination</p>	<p>Delete from " , but in addition to the payments specified..." to the end of the sub-clause.</p>
<p><b>Sub-Clause 69.4</b> Contractor's Entitlement to Suspend Work</p>	<p>Add this paragraph:</p> <p>Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Sub-Clause 69.1, the Contractor may suspend work or reduce the rate of work within 56 days after notification by the FA to the Employer's government that the Bank has suspended disbursement from its loan, which finances in the whole or in part the execution of the Works.</p>
<p><b>Sub-Clause 69.6</b> Suspension of FA Loan or Credit</p>	<p>Add the following Sub-Clause 69.6</p> <p>In the event the FA suspends the loan or credit to the Employer from which part of the payments to the Contractor are being made:</p> <ul style="list-style-type: none"> <li>(a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the suspension notice from the FA.</li> <li>(b) If the Contractor has not received sums due to him upon the expiration of the 42 days for payment provided for in Sub-Clause 60.8, the Contractor may immediately issue a 14-days termination notice.</li> </ul>
<p><b>Clause 70</b> Changes in Cost and Legislation</p>	<p>Delete Clause 70 in its entirety, and substitute:</p>



**Sub-Clause 70.1**  
**Price**  
**Adjustment**

The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 60.1, shall be adjusted in respect of the rise or fall in the cost of labor, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause.

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

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 adjustment to the Interim Payment Certificates in respect of changes in cost and legislation shall be determined from separate formulae for each of the currencies of payment and of the types of construction work to be performed and Plant to be supplied. The formulae will be of the following general type:

$$pn = A + b (Ln/Lo) + c (Mn/Mo) + d (En/Eo) + etc.$$

Where:

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

$A$  is a constant, specified in the Appendix to Bid, representing the nonadjustable portion in contractual payment,

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

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

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

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

- Sub-Clause 70.4**  
Sources of  
Indices and  
Weightings
- The sources of indices shall be those listed in the Appendix to Bid, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his bid the tabulation of Weightings and Source of Indices in the Appendix to Bid, which shall be subject to approval by the Engineer.
- Sub-Clause 70.5**  
Base, Current  
and Provisional  
Indices
- The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of bids, Current indices or prices shall be those prevailing on the day 28 days prior 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 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 adjustment 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 instructed 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 Engineer and shall be added to or deducted from the Contract price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1 to 70.7.

- Sub-Clause 72.2**  
Currency Proportions Delete the words from "prevailing, as determined by the Funding Agency" to the end of the Sub-Clause and substitute with "stated by the Contractor in the Appendix to Bid, included with its original Bid."
- Sub-Clause 72.4**  
Substantial Changes in Currency Requirements The foreign and local currency portions of the balance of the Contract Price shall be amended by agreement between the Employer and the Contractor to reflect any substantial changes in the expected foreign and local currency requirements of the Contractor during the execution of the Works, provided that
- (a) the Contractor shall inform the Employer and the Engineer whenever any such substantial change may occur, or
  - (b) the Engineer may recommend a review of such expected requirements if in his judgment there is evidence of a change in the country of origin of materials, Plant, or services to be provided under the Contract which should result in any substantial change of such expected requirements.
- Sub-Clause 73.1**  
Foreign Taxation 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, and income and other taxes that may be levied in accordance with the laws and regulations in being on the date 28 days prior to the latest date for submission of bids in the Employer's country on the Contractor's Equipment, Plant, materials, and supplies (permanent, temporary, and consumable) under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's country on profits made by him in respect of the Contract.
- Sub-Clause 73.3**  
Income Taxes on Staff The Contractor's staff and labor will be liable to pay personal income taxes in the Employer's country in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.
- Sub-Clause 73.4**  
Duties on Contractor's Equipment Notwithstanding the provisions of Sub-Clause 73.2, Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the time of completion of the Contract plus six months, in an amount equal to the import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event that the

Contractor's Equipment is not exported from the Employer's country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare parts to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable law. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value and the residual value of the Contractor's Equipment and spare parts to be exported; and (b) on the initial imported value of that Contractor's Equipment and spare parts remaining in the Employer's country after completion of the Contract. Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

**Sub-Clause 74.1**  
**Illegal Payment**

If the Contractor, or any of this Subcontractors, agents or servants gives or offers to give to any person any payment, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, then the Employer may enter upon the Site and the Works and expel the Contractor and 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, materials, or services which will be incorporated in or required for the Works, as well as the Contractor's Equipment and other supplies, shall have their origin in any of the countries and territories eligible under the FA *Guidelines for Procurement*, as defined in section 14 of the bidding documents, "Eligibility for the Provisions of Goods, Works, and Services in Bank-Financed Procurement."

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

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

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

If the Contractor is a joint operation 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 Employer whose determination shall be final.

## **Annex A to Conditions of Particular Application (Version 1)**

### **Disputes Review Board's Rules and Procedure**

(see Clause 67 of the Conditions of Particular Application)

1. Except for providing the services required hereunder, the Board Member shall not give any advice to either party or to the Engineer concerning conduct of the Works. The Board Members:
  - (a) shall have no financial interest in any party to the Contract, or the Engineer, or a financial interest in the Contract, except for payment for services on the Board;
  - (b) shall have had no previous Employment by, or financial ties to, any party to the Contract, or the Engineer, except for fee-based consulting services on other projects, all of which must be disclosed in writing to both parties to appointment to the Board;
  - (c) shall have disclosed in writing to both parties prior to appointment to the Board any and all recent or close professional or personal relationship with any director, officer, or employee of any party to the Contract, or the Engineer, and any and all prior involvement in the project to which the Contract relates;
  - (d) shall not, while a Board Member, be employed whether as a consultant or otherwise by either party to the Contract, or the Engineer, except as a Board Member, without the prior consent of the parties and the other Board Members;
  - (e) shall not, while a Board Member, engage in discussion or make any agreement with any party to the Contract, or with the Engineer, regarding Employment whether as a consultant or otherwise either after the Contract is completed or after service as a Board Member is completed;
  - (f) shall be and remain impartial and independent of the parties and shall disclose in writing to the Employer, the Contractor, the Engineer, and one another any fact or circumstance which might be such as to cause either the Employer or the Contractor to question the continued existence of the impartiality and independence required of Board Members; and
  - (g) shall be fluent in the language of the Contract
2. Except for its participation in the Board's activities in the Contract and in this Agreement none of the Employer, the Contractor, and or the Engineer shall solicit advice or consultation from the Board or the Board Members on matters dealing with the conduct of the Works.
3. The Contractor shall:
  - (a) Furnish to each Board Member one copy of all documents which the Board may request including Contract Documents, progress reports,

variation orders, and other documents pertinent to the performance of the Contract.

- (b) In cooperation with the Employer, coordinate the Site visits of the Board, including conference facilities, and secretarial and copying services.
4. The Board shall begin its activities following the signing of a Board Member's Declaration of Acceptance by all three Board Members, and it shall terminate these activities as set forth below:
- (a) The Board shall terminate its regular activities when either (i) the Defects Liability Period referred to in Sub-Clause 49.1 (or, if there are more than one, the Defects Liability Period expiring last) has expired, or (ii) the Employer has expelled the Contractor from the Site pursuant to Sub-Clause 63.1, and when, in either case, the Board has communicated to the parties and the Engineer its Recommendations on all disputes previously referred to it.
  - (b) Once the Board has terminated its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it by either party. In case of such a referral, Board Members shall receive payments as provided in paragraphs 7(a)(ii), (iii) and (iv).
5. Board Members shall not assign or subcontract any of their work under these Rules and Procedures.
6. The Board Members are independent contractors and not employees or agents of either the Employer or the Contractor.
7. Payments to the Board Members for their services shall be governed by the following provisions:
- (a) Each Board Member will receive payments as follows:
    - (i) A retainer fee per calendar month equivalent to three times the daily fee established from time to time for arbitrators under the Administrative and Financial Regulations of the International Center for Settlement of Investment Disputes (the ICSID Arbitrator's Daily Fee), or such other retainer as the Employer and Contractor may agree in writing. This retainer shall be considered as payment in full for:
      - (A) Being available, on 7 days' notice, for all hearings, Site Visits, and other meetings of the Board.
      - (B) Being conversant with all project developments and maintaining relevant files.
      - (C) All office and overhead expenses such as secretarial services, photocopying and office supplies (but not including telephone calls, faxes and telexes) incurred in connection with the duties as a Board Member.
      - (D) All services performed hereunder except those performed during the days referred to in paragraph (ii) below.

- (ii) A daily fee equivalent to the ICSID Arbitrator's Daily Fee, or such other daily fee as the Employer and Contractor may agree in writing. This daily fee shall only be payable in respect of the following days, and shall be considered as payment in full for:
  - (A) Each day up to a maximum of two days of travel time in each direction for the journey between the Board Member's home and the Site or other location of a Board meeting.
  - (B) Each day on Site or other locations of a Board meeting.
- (iii) Expenses. In addition to the above, all reasonable and necessary travel expenses (including less than first class air fare, subsistence, and other direct travel expenses) as well as the cost of telephone calls, faxes and telexes incurred in connection with the duties as Board Member shall be reimbursed against invoices. Receipts for all expenses in excess of US\$25.00 (U.S. Dollars Twenty Five) shall be provided.
- (iv) Reimbursement of any taxes that may be levied in the country of the Site on payments made to the Board Member (other than a national or permanent resident of the country of the Site) pursuant to this paragraph 8.
- (b) Escalation. The retainer and fees shall remain fixed for the period of each Board Member's term.
- (c) Phasing out of monthly retainer fee. Beginning with the next month after the Taking Over Certificate referred to on Clause 48 (or, if there are more than one, the one issued last) has been issued, the Board Members shall receive only one-third of the monthly retainer fee. Beginning with the next month after the Board has terminated its regular activities pursuant to paragraph 4(a) above, the Board Members shall no longer receive any monthly retainer fee.
- (d) Payments to the Board Members shall be shared equally by the Employer and the Contractor. The Contractor shall pay Member's invoices within 30 calendar days after receipt of such invoices and shall invoice the Employer (through the monthly statements to be submitted in accordance with Sub-Clause 60.1 of the General Conditions) for one-half of the amounts of such invoices. The Employer shall pay such Contractor's invoices within the time period specified in the Construction Contract for other payments to the Contractor by the Employer.
- (e) Failure of either the Employer or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the Contract, entitling the non-defaulting party to take the measures set forth, respectively, in Clause 63 or Clause 69.
- (f) Notwithstanding such event of default, and without waiver of rights therefrom, in the event that either the Employer or the Contractor fails to make payment in accordance with these Rules and Procedures, the other party may pay whatever amount may be required to finance the operation of the Board. The party making such payments, in addition to all other rights arising from such default, shall be entitled to reimbursement of all



sums paid in excess of one-half of the amount required to maintain operation of the Board, plus all costs of obtaining such sums.

8. Board Site Visits:

- (a) The Board shall visit the Site and meet with representatives of the Employer and the Contractor and the Engineer at regular intervals, at times of critical construction events, at the written request of either party, and in any case not less than 3 times in any period of 12 months. The timing of Site visits shall be as agreed among the Employer, the Contractor and the Board, but failing agreement shall be fixed by the Board.
- (b) Site visits shall include an informal discussion of the status of the construction of the Works, an inspection of the Works, and the review of any Requests for Recommendation made in accordance with paragraph 10 below. Site visits shall be attended by personnel from the Employer, the Contractor and the Engineer.
- (c) At the conclusion of each Site visit, the Board shall prepare a report covering its activities during the visit and shall send copies to the parties and to the Engineer.

9. Procedure for Dispute Referral to the Board:

- (a) If either party objects to any action or inaction of the other party or the Engineer, the objecting party may file a written Notice of Dispute to the other party with a copy to the Engineer stating that it is given pursuant to Clause 67 and stating clearly and in detail the basis of the dispute.
- (b) The party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 7 days after receiving the response. Both parties are encouraged to pursue the matter further to attempt to settle the dispute. When it appears that the dispute cannot be resolved without the assistance of the Board, or if the party receiving the Notice of Dispute fails to provide a written response within 14 days after receipt of such Notice, either party may refer the dispute to the Board by written Request for Recommendation to the Board. The Request shall be addressed to the Chairman of the Board, with copies to the other Board Members, the other party, and the Engineer, and it shall state that it is made pursuant to Clause 67.
- (d) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the Board.
- (e) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board shall decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both parties be submitted to each Board Member before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.

- (f) During the hearing, the Contractor, the Employer, and the Engineer shall each have sample opportunity to be heard and to offer evidence. The Board's Recommendations for resolution of the dispute will be given in writing to the Employer, the Contractor and the Engineer as soon as possible, and in any event not less than 56 days after receipt by the Chairman of the Board of the written Request for Recommendation.

10. Conduct of Hearings ;

- (a) Normally hearings will be conducted at the site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Private sessions of the Board may be held at any cost effective location convenient to the Board.
- (b) The Employer, the Engineer and the Contractor shall be given the opportunity to have representatives at all hearings.
- (c) During the hearings, no Board Member shall express any opinion concerning the merit of the respective arguments of the parties.
- (d) After the hearings are concluded, the Board shall meet privately to formulate its Recommendations. All Board deliberation shall be conducted in private, with all Members' individual views kept strictly confidential. The Board's Recommendations, together with an explanation of its reasoning shall be submitted in writing to both parties and to the Engineer. The Recommendations shall be based on the pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.
- (e) The Board shall make every effort to reach a unanimous Recommendation. If this proves impossible, the majority shall decide, and the dissenting Member may prepare a written minority report for submission to both parties and to the Engineer.

11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, Site visits, and conduct of hearings, the Board shall have full and final authority.

12. After having been selected and, where necessary, approved, each Board Member shall sign two copies of the following declaration and make one copy available each to the Employer and to the Contractor:

## Board Member's Declaration of Acceptance

### WHEREAS

- (a) a Construction Contract (the contract) for the \_\_\_\_\_ *[name of project]* project has been signed on \_\_\_\_\_ *[fill in date]* between \_\_\_\_\_ *[name of Employer ]* (the Employer) and \_\_\_\_\_ *[name of contractor]* (the Contractor).
- (b) Clause 67 of the Conditions of Particular Application of the Construction Contract and Annex A to said Conditions provide for the establishment and operation of a Disputes Review Board (the Board);
- (c) the undersign has been selected (and where required, approved) to serve as a Board Member on said Board;

NOW THEREFOR, the undersigned Board Member hereby declares as follows:

- 1. I accept the selection as a Board Member and agree to serve on the Board and to be bound by the provisions of Clause 67 of the Conditions of Particular Application of the Contract and Annex A to said Conditions.
- 2. With respect to paragraph 1 of said Annex A, I declare
  - (a) that I have no financial interest of the kind referred to in subparagraph (a);
  - (b) that I have had no previous Employment nor financial ties of the kind referred to in subparagraph (b); and
  - (c) that I have made to both parties any disclosures that may be required by subparagraphs (b) and (c).

### SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank : \_\_\_\_\_  
Address : \_\_\_\_\_  
Date : \_\_\_\_\_

**SECTION 6.**  
**SPECIFICATIONS**

**(Refer to Volume 2: Specification)**

**SECTION 7.**

**FORM OF BID, APPENDIX TO BID,  
AND BID SECURITY**

## Form of Bid

Name of Contract: \_\_\_\_\_ *[insert name of Employer]*

Gentlemen:

1. In accordance with the Conditions of Contract, Specification, Drawings, and Bill of Quantities and Addenda Nos ..... for the execution of the above-named Works we, the undersigned, offer to construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Specifications, Drawings, Bill of Quantities, and Addenda for the sum of \_\_\_\_\_ *[insert amounts in numbers and words]*  
*[as specified in the Appendix to Bid or such sums as may be ascertained in accordance with the conditions].*
2. We acknowledge that the Appendix forms part of our Bid.
3. We undertake, if our Bid is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Bid.
4. We agree to abide by this Bid until \_\_\_\_\_ *[insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
5. Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us.
6. We understand that you are not bound to accept the lowest or any bid you may receive.

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

Signature \_\_\_\_\_ in capacity of \_\_\_\_\_

duly authorized to sign bids for and on behalf of \_\_\_\_\_

*[ in block capitals or typed]*

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

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

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

Occupation : \_\_\_\_\_

## Appendix to Bid

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

### Part 1 : Conditions of Contract Sub-Clause

Definitions	1.1 (a), 69.6	The Funding Agency (FA) is the Japan Bank for International Cooperation (JBIC).
	1.1 (a)(i)	The Employer is:  <i>Directorate General of Water Resources Development, Ministry of Public Works Republic of Indonesia</i>
	1.1 (a)(iv)	The Engineer is <i>Project Manager of JRATUNSELUNA River Basin Development Project</i>
Engineer's Authority to Issue Variations	2.1 (d)(ii)	* _____ percent of the Contract Price * <i>to be advised</i>
	5.1 (a)	The language is <i>English</i>
	5.1 (b)	The law in force is that of <i>Indonesia</i>
Performance Security	10.1	The performance security will be in the form of a <i>conditional, bank guarantee</i> in the amount(s) of 5 percent of the Contract Price for local currency portion and 10 percent of the Contract Price for foreign currency portion.
Inspection of Site	11.2	Data made available by the Employer under Sub-Clause 11.1 is open for inspection at Jalan Brigjen Sudiarto No. 375 Semarang 50191 Central Java INDONESIA
Program to be Submitted	14.1	28 days.
Cash Flow Estimate	14.3	28 days.
Language Ability of Contractor's Representatives	15.2	The Language is <i>English</i>

Language Ability of Superintending Staff	16.3	The language is <i>English</i>
Country of the Employer	16.4	The country of the Employer is <i>Indonesia</i> .
Minimum Amount of Third Party Insurance	23.2	* _____ per occurrence, with the number of occurrences unlimited. * <i>to be advised</i>
Time for Issue of the Notice to Commence	41.1	7 days
Time for Completion	43.1	<i>Time of Completion for the whole of the Works is 1456 days.</i> <i>Time of Completion for Earthworks for the Dam Management Complex and for the access road to the Dam Management Complex is 364 days.</i>
Amount of Damages Liquidated	47.1	1‰ per day
Limit of Liquidated Damages	47.1	<i>five (5) percent of the final Contract Price</i>
Taking Over of Sections	48.2(a)	<i>The Time for Completion for Earthworks for the Dam Management Complex and for the access road to the Dam Management Complex is 364 days</i>
Defects Liability Period	49.1	364 days
	49.5	364 days.
Minimum Amount of Interim Payment Certificates	60.2	<i>An amount of Ten million Rupiah (Rp. 10,000,000) including the foreign portion of the amount for payment.</i>
Retention Money	60.5	<i>five (5) percent of Interim Payment Certificates</i>
Maximum Amount of Advance Payment	60.7	<i>twenty (20) percent of Contract Price</i>



Start Repayment of Advance Payment	60.7	After certification of <i>thirty (30) percent of the Contract Price.</i>
Monthly Recovery of Advance Payment	60.7	<i>forty (40) percent of the amount of monthly Interim Payment Certificates</i>
Number of Copies of Statement of Completion and Final Statement	60.1 60.10 60.11	<i>three (3) number</i>
Origin of Materials and Plant	60.3(a)(v) 60.3(d)	<i>[ listed under Sub-Clause 70.4 ]</i>
Rate of Interest upon Unpaid Sums	60.8	_____ Percent for payments in local currency. For other currencies, refer to the table immediately below.

<i>Currency (as per Sub-Clause 60.1)</i>	<i>London Inter-Bank-On-Lending Rate (libor) plus 2 percent<sup>1</sup></i>
Foreign Currency #1	
Foreign Currency #2	
Foreign Currency #3	

<sup>1</sup> The above rates of interest for foreign currencies shall be supplied by the Bidder, and these rates are subject to clarification/negotiation before formalizing the Contract

## Summary of Currencies of the Bid

Name of currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent $C = A \times B$	D Percentage of Bid Price $100 \times C$ (Bid Price)
Local Currency		1.00		
Foreign currency #1				
Foreign currency #2				
Foreign currency #3				
Provisional sums expressed in local currency	-	-	-	-
Total			Bid Price	100.00

Procedure for  
Settlement of  
Disputes

67

The procedure for Settlement of Disputes is:

the Disputes Review Board Procedure as described in  
Clause 67 of the Condition of Particular Application

67.1

The appointing authority shall be:

Badan Arbitrasi Nasional Indonesia

Notice to  
Employer and  
Engineer

68.2

The Employer's address is:

Directorate General of Water Resources Development  
Ministry of Public Works, Republic of Indonesia  
JRATUNSELUNA River Basin Development Project  
Jalan Brigjen Sudiarto No. 375  
Semarang 50191  
Central Java  
INDONESIA

The Engineer's address is:

The Project Manager of JRATUNSELUNA River  
Basin Development Project  
Jalan Brigjen Sudiarto No. 375  
Semarang 50191  
Central Java  
INDONESIA

Sources of Indices and Weightings 70.4 The source of indices and weightings shall be those provided by the Contractor in his Bid in accordance with Sub-Clause 14.4 of the Instruction to Bidders.

Weightings and Indices 70.3 In the tables immediately below, bidders shall (a) indicate their amounts of local currency payment, (b) indicate their proposed source and base values of indices for the different foreign currency elements of cost, (c) derive their proposed weightings for local and foreign currency payment as indicated below, and (d) list the exchange rates used in the currency conversion. If payment is to be made in more than one foreign currency, the bidder shall complete a similar table of source indices for each currency.

70.4

**Table A. Local Currency**

<i>Index code</i>	<i>Index description</i>	<i>Source of index</i>	<i>Base value and date</i>	<i>Bidder's related currency amount</i>	<i>Bidder's proposed weighting</i>
	Nonadjustable	-	-	-	A: _____* b: _____ c: _____ d: _____ e: _____
<b>Total</b>					<b>1.00</b>

\* Minimum 0.20

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

<i>Index Code</i>	<i>Index Description</i>	<i>Source of index</i>	<i>Base value and date</i>	<i>Bidder's related source currency in type/amount</i>	<i>Equivalent in FCI</i>	<i>Bidder's proposed weighting</i>
	Nonadjustable	-	-	-		A: _____* b: _____ c: _____ d: _____ e: _____
<b>Total</b>						<b>1.00</b>

<sup>1</sup> If the bidder wishes to quote more than one foreign currency (up to three), this table should be repeated for each foreign currency.

## Appendix to Bid

### Part 2 : Programme Resources, Schedules and Method Statements

(1) Overall Construction Programme Covering the Whole of the Contract Period

This programme, in bar chart form, shall be prepared in such manner as to serve as a basis for working out the progress schedule. This time schedule shall show in sufficient detail, the Bidder's proposed sequence of operations, together with the estimated time for each activity, it shall show that the proposed progress of the Works and the estimated completion time for the separate parts of the Works, including mobilization of the Contractor Equipment, meets the requirements of the bid and thus assures completion within the time specified. In addition the programme shall show all start and completion dates for all sections of the Works including the left bank access road and the earthworks for the Dam Management Complex which have Time for Completion as stated in the Appendix to Bid Part 1, Sub-Clause 43.1.

(2) Method Statement

This method statement shall show the construction methods which the Bidder expects to use in the construction of the Works. The statement shall also provide detailed description supported by drawings and separate construction schedules of the construction methods which the Bidder expects to use. These descriptions shall include information relating to :

(a) Preparatory Works

- (i) Method and route for inland transportation of Contractor Equipment.
- (ii) Construction of Contractor's office, laboratory workshop, warehouse, living quarters, batching plant and other temporary facilities, including water and electric supply systems and drainage, indicating the completion dates, locations, quantities and their type.
- (iii) Construction of temporary access roads, haul roads and temporary stream crossing, including necessary reinforcement of bridges or culverts on the existing roads, if any.
- (iv) Construction of buildings and facilities for Engineer.

(b) Diversion Works and Water Control

Plan for construction of tunneling works for diversion tunnel, tunnel lining and the construction of the upstream main cofferdam and other methods to control water during the construction period.

(c) Surface Excavation

Plan for clearing and grubbing, excavation, and disposal areas.

- (d) **Tunnelling for Outlet Tunnel**  
Plan for tunnelling works for outlet tunnel including detail of method and equipment proposed to be used.
- (e) **Drilling and Grouting**  
Plan for all curtain, blanket and consolidation grouting works.
- (f) **Embankment Construction**  
Plan for construction of the embankment including sources of materials, methods, equipment.
- (g) **Protection and Support of Excavation**  
Plan for the protection of excavation including methods of shotcrete production and placement and grouted anchor bars.
- (h) **Concrete Production and Concrete Construction**  
Plan for the production of aggregate batching, production, transportation of concrete for the various parts of the Works including cast insitu concrete and precast concrete and prestressing proposals.
- (i) **Road Construction**  
Plan for the construction of permanent access roads, including earthworks, pavement construction and surfacing.
- (j) **Metalwork and Water Control Plant**  
Plan for the design fabrication, transportation and installation of all metalwork for the outlet tunnel, outlet facilities including details of sub-contractual arrangements.
- (k) **Instrumentation of Structures**  
Plan for the installation of instrumentation for the dam structures.
- (l) **Generating Plant**  
Plan for the design, manufacture, inspection, transportation, installation, testing and commissioning of the generating plant. Refer to Appendix to Bid Part 8 for detailed information to be submitted.
- (m) **Relocation of Power Transmission Line**  
Plan for the relocation of the existing 150 kV power transmission line in the reservoir area including proposed sub-contractual arrangements for design and implementation.
- (n) **Permanent Electrical Installation**  
Plan for the design and installation of the permanent electrical supply installation for the works.
- (o) **Others**  
Plan for other works as applicable.

The construction method statement shall include all the major items of equipment, material and labour intended to be used by the Bidder for the

respective items of work, together with the Bidder's estimate of output of each unit of equipment per unit time.

## Appendix to Bid

### Part 3 : Key Personnel

The Bidder shall list in this part of the Appendix to Bid the key personnel whom he will employ to direct and execute the work together with their qualifications, experience, positions held and nationalities as provided for in the attached sheet.

The Bidder shall also provide a Site management Organization Chart showing all staff that he expects to engage upon the Site and in his head office. All staff shall be shown down to the level of Supervisors.

Position/Duty	Name	Summary of Qualifications and Experience and Present Position
Site Agent/Project Manager		
Deputy Site Agent/Project Manager		
Tunnel Construction : Engineer Geologist Superintendent Surveyors		
Embankment Construction : Engineer Superintendent etc.		

Bidder shall extend this list to include relevant personnel.

Detailed curriculum vitae of the listed personnel shall be appended in the attached format.

## Attachment to Appendix to Bid Part 3

### CURRICULUM VITAE OF

#### PROPOSED SUPERVISORY PERSONNEL TO BE FULLY ASSIGNED ON THE WORKS

The Bidder shall complete one form for each person. Experiences shall be stated in calendar years from the latest.

1. PROPOSED POSITION :
2. NAME :
3. DATE OF BIRTH, AGE :
4. NATIONALITY :
5. EDUCATION :
6. SPECIALITY :
7. REGISTRATION :
8. PERIOD OF EXPERIENCE :
9. COUNTRIES WORKED IN :
10. LANGUAGES SPOKEN :
11. MAJOR EXPERIENCES :

YEAR	DESCRIPTION OF DUTIES	ASSIGNED POSITION
2000		
etc.		



## Appendix to Bid

### Part 4 : Proposed Equipment to be Furnished by Bidder

The Bidder shall list in all major items of Equipment which he proposes to bring on to the Site.

Item No.	Description (Type, Model, Make)	Unit No.	Power Rating (kW)	Capacity or Output	Year of Manufacture	No. of Hours Operated or New	Present Location	Ownership *

\* State whether owned, rented or hire-purchased. If rented or hire-purchased, include rental and hire-purchase agreement.

## Appendix to Bid

### Part 5 : Schedule of Subcontractors

The Bidder shall enter in this schedule a list of the major sections and approximate value of the work for which he proposes to use subcontractors, together with details of the Subcontractors.

Item	Element of Work	Approximate Value	Name and Address of Subcontractor	Statement of Similar Works Executed

Note: Subcontractors proposed for generating plant shall have had experience in the design, manufacture, installation and commissioning of the following:

- i) Horizontal shaft Francis turbines within  $\pm 25\%$  of the stated design head and capacity (64.3 m and 1630 kW respectively).
- ii) Synchronous generators within  $\pm 25\%$  of the generator rating of 2000 kW.

The above equipment shall have been in successful operation for more than 2 years and shall be confined by supporting statements from owners or consultants for such installation.

## Appendix to Bid

### Part 6 : Estimated Labour Schedule

The Bidder shall complete an estimated labour schedule in a format as shown hereunder including the various categories of labour to be deployed for the complete duration of the Works.

Time from Commencement of Works (Months)	Charge Hands	Equipment Operators	Mechanics Welders Fitters Electricians etc.	Carpenters	Masons Concrete Workers	Steel Workers	Labourers		Drillers	Other *	Total
							Unskilled	Skilled			
3	Local Foreign										
6	Local Foreign										
9	Local Foreign										
12	Local Foreign										
15	Local Foreign										
18	Local Foreign										
etc.											
Completion											

\* Bidder to add categories as appropriate to the Works.

## Appendix to Bid

### Part 7 : Estimated Cash Flow

Period from Commencement of Works (months)	Estimated Value of Works to be Carried Out During Period		Estimated Value of Advances During Period	
	Local Portion (Rp. × 10 <sup>6</sup> )	Foreign Portion (Rp. × 10 <sup>6</sup> )	Local Portion (Rp. × 10 <sup>6</sup> )	Foreign Portion (Rp. × 10 <sup>6</sup> )
0 - 3				
3 - 6				
6 - 9				
9 - 12				
12 - 15				
15 - 18				
18 - 21				
21 - 24				
.				
.				
.				
Completion				
Subtotal				