

Attachment 2: Members of Project Implementation Committee

Irrigation Development Project in Western Bago Region

Project Implementation Committee (PIC)

Sr.	Name	Designation	PIC Title
1.	U Kyaw Myint Hlaing	Director General Irrigation Department	Chairperson
2.	U Tint Zaw	Deputy Director General Irrigation Department	Vice-Chairperson
3.	U Tun Kyaw Soe	Chief Mechanical Engineer	Member
4.	U Min Aung Than	Director Design Branch (Work 1)	Member
5.	U Tint Lwin	Director Procurement Branch	Member
6.	U Kyaw Zaw	Director Planning & Works Branch	Member
7.	Daw Aye Aye Myint	Director Account Branch	Member
8.	U Myint Tun Latt	Director Construction Circle (2)	Secretary

Attachment 3: Members of Project Management Unit

Irrigation Development Project in Western Bago Region

Project Management Unit (PMU)

Sr.	Name	Designation	PMU Title
1.	U Myint Tun Latt	Director Construction Circle (2)	Project Director
2.	U Ko Ko Htay	Deputy Director Construction Circle (2)	Deputy Project Director
3.	U Soe Aung	Deputy Director Maintenance Division (Bago- West)	Deputy Project Director

Project Site Management

4.	U Aung Moe Win (North Nawin Irrigation System)	Assistant Director (1) Construction Circle (2)	Project Manager (1)
5.	U Ko Ko Htay (South Nawin Irrigation System)	Assistant Director (2) Construction Circle (2)	Project Manager (2)
6.	U Hla Win Myint (Wegyi Irrigation System)	Assistant Director (3) Construction Circle (2)	Project Manager (3)
7.	U Myint Thaug (Taung Nyo Irrigation System)	Assistant Director Maintenance Division (Bago-West)	Project Manager (4)
8.	U Htay Win (Mechanical Support)	Assistant Director(Mechanical) Construction Circle (2)	Project Manager (5)

Attachment 4: New Procurement Rule of Myanmar Government

Republic of the Union of Myanmar

Ministry of Construction

Office of the Minister

Naypyitaw

Subject: **Submission for the approval of the Guidelines for Performing the Works by means of Contractor basis**

1. In order to enable the business transactions in the Republic of the Union of Myanmar to be smooth and efficient, Myanmar has been exercising the means of Contractor basis in its construction projects. In this regard, a document of “**the Guidelines for Performing the Works by means of Contractor basis**” is drafted, in accordance with the existing laws and basis standards of Works in general, as a result of the Workshop which was held in 11th November, 2013 to regulate a standard for all ministries dealing with tendering, advertising to tender, selling tender form, crediting the deposit, opening the tender, selecting the tender, forms of contractor agreement, executing the contract, enforcing the provisions of the contract. This document is submitted to the Office of the Union Government.

2. The Office of the Union Government referred the document of “the Guidelines for Performing the Works by means of Contractor basis” to the Economic Committee for its approval. In a meeting (Meeting No. 21/2013) of the Economic Committee held on 28th November, 2013, the Committee made a remark “to submit this document to the meeting of the Union Government unless having discussion” and instructed the Ministry of Construction to do so.

3. Accordingly, the Ministry of Construction submitted this document to the Union Government, Republic of the Union of Myanmar and the Ministry has received a letter which stated that the document is approved in the meeting of the Union Government (Meeting No. 33/2013) held on 11th December, 2013 and such approval is mentioned in its Minutes of Meeting. Therefore, you are informed to proceed as it is deemed necessary.

XXXXXXX

Union Minister (on behalf of)
Aung Tun, Head of Office

To:

- Managing Director
Public Works Department

- Director General
Department of Human Settlement & Housing Development

Letter No: 34 / Sub-1 / 2014 (C 365)

Date: 8th January, 2014

Republic of the Union of Myanmar
Office of the Union Government

Letter No:31 / 252 – Contractor / Ah Pha Ya (2014)

Date : 8th January, 2014

To –

All Union Ministries

All Region or State Governments

All Self-Administered Division or Self-Administered Zone Leading Bodies

Subject: To follow the Guidelines for Performing the Works by means of Contractor basis

1. As the document of “the Guidelines for Performing the Works by means of Contractor basis” is drafted by the Ministry of Construction as a Focal Ministry in its drafting and already approved at the meeting of the Union Government (Meeting No. 33/2013), the Ministry steps forward to circulate at the earliest this document to all Union Ministries, all Region or State Governments and all Self-Administered Division or Self-Administered Zone Leading Bodies for their compliance.

2. All Union Ministries, all Region or State Governments and all Self-Administered Division or Self-Administered Zone Leading Bodies are informed to follow the Guidelines for Performing the Works by means of Contractor basis in fulfilling your functions relating to the contractors’ works.

xxxxx

Zaw Than Thin

Director General

Cc:

President Office

Leading Office of the President

Leading Offices of the Vice-Presidents

Union Attorney General's Office

Union Auditor General's Office

Union Civil Service Board

Central Bank of Myanmar

Naypyitaw Council

Naypyitaw Development Council

Mandalay City Development Council

Yangon City Development Council

For Office's receipt

Republic of the Union of Myanmar

Ministries

Guidelines for Performing the Works by means of Contractor basis

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Guidelines for Performing the Works by means of Contractor basis

Recital

1. There are two functions: so called Execution and Supervision in the performance of construction and maintenance of the works. The said Execution and Supervision are integrated in the functions of government departments to deal with works. In accordance with the economic reform and developed economic policy of the country, the works shall be operated by means of contractor basis under the guidance the Government of the Republic of the Union of Myanmar. For that reason, by the expertise and nature of the works, the department will operate the works which suit the department while the rest of the works shall be operated as follows; some works by the sole contractor basis and some works by the contractor and department jointly.

References relating to the standards shall be in accordance with the Myanmar Building Code Volume (I) and Volume (II). Public Works Department Code of the Ministry of Construction shall be applied as legal references for tendering, selecting the contractor and executing the contracts. For accounting standards, Public Works Accounts Code of the Ministry of Construction shall be applied. When the initial floor price for tender is considered, such calculation shall be based on the Analysis of Rates (Building, Airport, Road, Bridge, Clean Water, Electricity and Research Laboratory) of the Ministry of Construction as a reference relating to standards.

In the guidelines, it is compiled with four chapters for the engineers' functions after comprehensive discussions were held among the representatives from the Ministries at the workshop. However, these guidelines may not be deemed comprehensive as there might be left some important matters which should be described herein. The Ministry of Construction cordially offers the experts and the responsible personnel to provide their valuable suggestions continuously.

Goal

In order to enable the business transactions in Myanmar to be smooth and efficient, there are objectives to enact law and rules to lay down good practices in tendering and executing the contracts for construction works; and to implement the construction works speedily based on similar policies for the works of Ministries which allow contractor basis.

Objective

The objectives of this document of guidelines are as follows;

- (a) to achieve a qualified procurement tendering
 - to be in the right costs
 - to be qualified
 - to prevent unnecessary losses
- (b) to develop the construction related businesses.

Chapter 1

Schedule of Rates, Work Authority and Estimate

2. When works are operated on contractor basis, they require preparing for schedule of rates, work authority and estimate. This preparation may be slightly different from the current departmental scheme. Hence, a preparation method based on the current scheme and appropriate with the contractor basis is set forth as follows.

Preparing Schedule of Rates

3. In the works of department, the estimated costs shall be prepared for price of materials and wages separately. When the work is done by contractor basis, the price for the items of the work shall include price of materials, wages and other expenses; and contractor who takes responsibility for the work is legally allowed to enjoy reasonable benefits. Thus, the price for the items of the work shall be prepared as follows;

(a) direct cost of material	=	A
(b) direct wages	=	B
(c) costs for machines	=	C
(d) expenditures in general	=	D
(e) contractor's profit 10%	=	E

(A+B+C+D)

Price = (A+B+C+D+E)

4. It is important to note that neither Schedule of Rates should be extremely higher nor lower. The Requirement of materials and the amount of labour shall be calculated in accordance with the "Analysis of Rates" published by Public Works Department. To be consistent with local price, the price of materials, transportation costs and wages should be considered to be the nearest value with the actual price in local.

5. Price manual for each township shall be made available and Region or State Chief Engineers or Directors shall, together with other relevant ministries, scrutinize such price manual at least once a year and make approval by submitting to the local authority. If they think fit to amend it, it shall be amended from time to time. In the event that some items of work are not described in the price manual, the concerned engineer shall submit such event with his calculation and receive the consent of Region or State Chief Engineers or Directors.

Preparing Work Authority

6. Work authority is a document in which the price calculations of regular and special maintenance works are described. Regular maintenance works are the performance of maintaining the buildings, roads and bridges to keep the original conditions without any change in condition. The term “without change in condition” means renovating a wooden wall of a building with wood but not with brick and maintaining a ground land road as it is but not rock road. For regular maintenance works, work authority shall be prepared in the priority order of structural, protective and decorative.

7. Executive Engineer or Assistant Director is the authority to approve the work authority for regular maintenance works. For special maintenance works, budget allocation shall be requested for permission. After the concerned authority approves and budget allocation is passed, Executive Engineer or Assistant Director shall continue the works by giving his consent relating to the work authority.

8. Sometimes, the price of materials which will be paid by the department is comparatively much and the wages and expenses for minor materials are considerably less in the price of the whole work at the time of preparation of work authority. Therefore, the price of materials payable by the department shall be described in the separate list as a direct charge to work in order to avoid tendering.

The preparation of the work authority is attached hereto as an annex (A).

Estimating

9. The costs shall be estimated to commence the new works. It is important to note that the items of work should not be left when the cost is estimated in accordance with the designs for either building works or the works of roads and bridges.

10. The estimates may be approved and the professional certificate may be issued by the following authorities;

(a) Executive Engineer or Assistant Director

Assistant Chief Engineer or Deputy Director - up to 50 million kyat

(b) Chief Engineer or Director - up to 100 million kyat

(c) Chief Executive Engineer or Deputy Chief Executive Engineer - up to 200 million kyat

(d) Deputy Managing Director or Deputy Director General - up to 300 million kyat

(e) Managing Director or Director General - above 300 million kyat

Performing the Works by Contractor basis

Tendering

11. There are two rules for tendering. They are –
- EPC1 (Engineering Procurement Civil Works) means tenderer submits his tender with Architectural Drawing / Structural Drawing which he prepares.
 - EPC2 (Equipment Procurement Civil Works) means employer calls for tender with Architectural Drawing / Structural Drawing which he prepares.

Price of works to tender

12. There are works done by contractor basis. Among them, some works require tender but some need not tender and will be done by direct selection of the appropriate contractors.
13. The works which are worth over five (5) million Kyat require tendering. The cost for Department's supervision is not counted in the calculation of the price of work. Sometimes, the cost of the major materials, among the items of work, which will be reimbursed by the Department is not included in the Work Authority and Estimate. Such cost is separately prepared and paid directly to the contractor. In such case, the price of the materials payable by the Department shall not be included in the calculation of the price of work to tender.

Works without tender

14. When the works which are worth five (5) million Kyat and less need not to be done through tendering and will be done by selecting the appropriate contractors directly where it is important to have fairness. The following shall be noted for having fairness;
- (a) no extremely difference between the contractors who are selected for the works;
 - (b) allowing them to do fairly between the hard works and easy works
 - (c) allocating them fairly the works which are benefited less or more.

Preparing to tender

15. The following shall be done for the works which are designated to be tendered;
- (a) Permission on expertise and budget for Work Authority and Estimate shall be approved by the concerned authorities;
 - (b) Budget is allocated;

- (c) Forms for tender and contract shall be chosen in accordance with the nature of works;
- (d) Sales price of tender form shall be considered and such forms shall be printed in a necessary number;
- (e) Registered book for selling tender form is required;
- (f) The amount of deposit which will be credited by the contractors shall be considered;
- (g) Advertising methods, depending on the price of works, shall be considered;
- (h) Tender box shall be locked and sealed and then put in a place where tenderer can see and use it easily;
- (i) Designs and standards relating to the works shall be arranged for the convenience access;
- (j) If tender is for sample, the samples received shall be registered. To avoid having mistake, the sample shall be checked whether the tenderer's name is put on it or not before it is received. The samples shall be kept carefully by Executive Engineer or Assistance Director as they are required to be kept until the tender process is completed and final payment is made.

Advertising to tender

16. A core idea for performing the works by means of contractor basis is to reduce the costs by encouraging competitiveness. Therefore, tendering should be advertised extensively to reach all who will interest in it. Furthermore, tender advertisement for all works shall be distributed. The works which are worth over five (5) million Kyat of estimated cost, either construction or maintenance, shall be tendered. Open tender shall be invited by advertising in public. If necessary, such tender advertisement should be written in both English and Myanmar languages and struck on the public places. Tenders for the works which are worth over fifty (50) million Kyat or important should be advertised in newspapers for tendering. Any reason for any event of breaking the law shall be recorded in writing.

17. The following shall be stated in tender advertisement;

- (a) title and location of work;
- (b) address of office and contact person for submission of tender;
- (c) the category of contractor who are allowed for tender;
- (d) the amount of deposit and receipt or challan for crediting deposit which must be attached with tender;

- (e) the size, amount and quantity of the sample shall be described if it requires sample;
- (f) price for tender form and date when such form is at the earliest available;
- (g) to put and seal the tender in envelope;
- (h) any amendment shall be initialed whenever there is amendment;
- (i) latest time and date to submit tender;
- (j) date for opening tender;
- (k) the statement which states that employer has a right to reject tender without giving any reason;
- (l) to make available the office in office hour for any inquiry;

18. When tender forms are sold out, the sale price of such forms depending on the price of works to be tendered shall be decided as follows;

<u>Price of work (Million Kyat)</u>	<u>Price of tender form (Kyat)</u>
Less than 50	2,000
Between 50 and 100	5,000
Between 100 and 1,000	10,000
Between 1,000 and 2,000	15,000
Between 2,000 and 3,000	30,000
Above 3,000	50,000

All of the sales amount shall be booked in the budget of the Department and the expenses for tender forms and other costs shall not be deducted from such amount. Such expenses for tender forms shall be paid under the regular expenditure of the Department.

19. The following shall be carried out during the sales of tender forms and the submission of tenders;

- (a) to sell tender forms to the contractors who are qualified;
- (b) to record the name, national identity card number, address of the person who buys tender form;
- (c) to issue the receipt after receiving payment from depositor;
- (d) to place tender box which is locked and sealed in the place where everybody can see it;

- (e) when the last date and time for submission of tender is lapsed, a hole of the tender box through which the envelope of tenders are put in shall be covered on with a paper on which Executive Engineer or Assistance Director is signed.
- (f) to save the tender box in a safety place if it is not opened on the same date which is the last date for submission of tender;
- (g) to prepare a comparative list of prices.

20. For submitting tender, tenderer credits 1% of the price of work to the account of the concerned department as deposit stipulated for the respective work in each Region or State.

If a sole company will compete in 10 tenders, the deposit shall be credited for each tender.

The deposit of those who does not pass in tendering shall be reimbursed within a week after the receipt of deposit is submitted. If such receipt cannot be submitted and a certified document which states the receipt is actually lost and approved by all of the Board of Directors of the company, is submitted, deposit shall be reimbursed in a week.

The deposit of those who passes in tendering for construction work shall be reimbursed within seven (7) days after he shall furnish 5% of the Performance Guarantee within five (5) days.

The deposit of those who passes in tendering for procurement work shall be reimbursed within seven (7) days after he shall furnish 10% of the Performance Guarantee within two (2) weeks.

Tender shall be rejected when tenderer makes effort to acquire any help from any officer of the government or any authority for his success in tendering.

Opening the tender

21. All tenderer shall be invited and the submitted open tenders shall be put in a box in front of everybody at the hall for selecting the tender. The keys of tender box shall be not kept in a hand of a person but with others for safety so that such box can be opened when all of them assemble in such place. However, tenders should be opened and verified in advance for technical matters in the case where tenders require technical assessment. Only if technical assessment is completed, the offer of such tenderer shall be proceeded. If technical assessment is not completed, such tender offer shall not be opened and shall be returned with all documents within a week.

Tender shall be opened in front of all members of committee and tenderers at the designated day. Tender Selection Committee shall announce whether tenders are in conformity with the rules and regulations before the respective committees on the day when tenders are opening.

Tender shall be opened on the designated date, time and place before tenderers or their representatives. The following shall be carried out at the opening the tender;

- (a) Tender box shall be opened after it is shown before the attendees that locks and seals on the tender box are in good conditions;
- (b) Tenders submitted shall be numbered, listed in the registered book and signed by an officer whose rank is not lower than Executive Engineer or Assistant Director;
- (c) Names of tenderers and the prices of tender offers shall be written on board for public;
- (d) To avoid any difference in future, announcement shall be made by which such tender prices shall be deemed confirm only after they are checked whether they are in conformity with the rules and regulations;
- (e) Tenders submitted shall be kept by an officer whose rank is not lower than Executive Engineer or Assistant Director and he asks for trustworthy staff to list the comparative price schedule in his sight. If it is not completed at that time, such tenders shall be place in safe until next act;
- (f) First and Second Supervisors shall sign with their respective names and titles on the comparative price schedule.

Selecting the tender

22. The organization which invites tenders shall consider the minimum and maximum floor prices for tendering. Tenders submitted below the minimum floor price and above the maximum floor price shall be rejected. Thus, tenders submitted above the minimum floor price and below the maximum floor price shall be considered.

The companies which submit tenders shall be selected with the following conditions;

- Number and experience of professional engineer, senior registered engineer and registered engineer who are working in such company;
- Possession of machine and vehicle of such company;
- Financial flow chart of such company;
- Previous experience of work and success of such company;
- Approval, objection and remarks of the Ministries which such company worked for;
- Rank category of such company approved by Myanmar Engineers Council.

The concerned ministry ranks the companies based on the above check-list and the company which receives the highest score shall be selected for work. In addition, a new company which has well-experienced engineers but no work experience should be prioritized in selection for tender in order to emerge more entrepreneurs in Myanmar. The companies should not be prioritized only because they are in the top list.

In general, tender which offers the lowest price shall be selected. On the other hand, the quality in procurement is also important. As such, selection of tenders shall be considered on the following circumstances;

- (a) Good quality for procurement tender;
- (b) Lower price;
- (c) Sound financial standing of such contractor;
- (d) Having work experience;
- (e) Trustworthy.

If a tender which offers the lowest price is rejected, the reason of such rejection shall be fully written on such tender.

Types of Contractor Agreement

23. When works are carried out by contractor basis, relevant type of contractor agreement are used by the nature of works and the size of works. Works include two types: regular maintenance and capital expenditure. An agreement shall be executed for maintenance works carried out by contractor basis. For works done by capital expenditure, an agreement will be executed only for the price, items of works and completion period. There are five types of contract by the nature of works and the size of works;

- (a) Short Form – a form executed for the price of the items of work for maintenance without requiring tender. The **sample form (1)** used for maintenance works for building, bridge and procurement is attached as **Annex (B)**.
- (b) Long Form – a form used for maintenance works when they are tendered. Deposit for tenderer is 1% of the price of work. The contract is executed only for price. The price shall be filled in **Table (1)** and the materials issued by the Department shall be filled in **Table (2)** respectively. For example, it is used for maintenance works for building, bridge and procurement. The **sample form (2)** is attached as **Annex (C)**.
- (c) Form F1 – a form used for modification or expansion of buildings, building a new one through tendering. Deposit of tenderer shall be furnished by in cash or challan. 1% of the price of work as Deposit and 5% of such price as Performance Guarantee shall be credited. This type of contract is executed for the price of the whole work but not stated separately for the prices of items of work and quantity. In other means, it is a kind of piece work. The price of tender selected shall be described in paragraph (b) of the Memorandum. Deposit at the time of submitting the tender shall be described in paragraph (c). In paragraph (d), 5% of the price of tender for the maximum total deposit described in paragraph (b) is designated. The completion period which is stated at the time of inviting tender shall be filled

in words at the paragraph (e). The issue date of Work Order to commence the work shall be written in paragraph (f). The expire date of work which will be counted from the commencement date stated in paragraph (f) for the period stated in paragraph (e) shall be filled in the paragraph (g).

The brief information of the size, category, and standard of the work, and items of work to be included shall be described in Table (1). The materials issued by the Department and the deducted price for them shall be filled in Table (2). In accordance with the provision 6(b), liquidated damage for the first extension of period shall be 0.15% of the price of tender and for the second and further extensions shall be 0.20%. **Sample form (3)** is attached as **Annex (D)**.

- (d) Form F2 – this contract form is similar to Form F1. The difference is that Form F1 is executed for the price of the whole work and Form F2 is for the price and quantity of each item of work. Therefore, most of the provisions for contractor, descriptions in Memorandum and other stipulations are the same. The quantity, price and the prices of tenders are described in Table (1). The materials to be issued by the Department and prices shall be stated in Table (2). **Sample form (4)** is attached as **Annex (E)**.
- (e) Local Law Form C – this form is used for procurement. The provisions for deposit and performance bank guarantee are as the same as in Form F1 and Form F2. This contract is executed for the quantity of materials to be procured in each work, price and completion period. Memorandum shall be fulfilled as of Form F1 and Form F2.

The quantity of materials to be procured in each work, price and the prices of tenders are described in Memorandum – Table (1). The materials to be issued by the Department and prices shall be stated in Table (2). **Sample form (5)** is attached as **Annex (F)**.

24.A. The original contracts mentioned above are kept in the office concerned which has accepted tenders and the contractors concerned and the copies shall be placed in the respective office of the Executive Engineer or Assistant Director.

The contracts shall be numbered in the order of budget year together with the title of the officer who accepts the tender. For example:

The contracts concluded in the year of 2013-14 are numbered as follows -

Contract No. 1, EE/AD, 13-14

Contract No. 2, EE/AD, 13-14

Contract No. 1, CE/D, 13-14

Contract No. 2, CE/D, 13-14

Authorized person to execute the contract

24.B. An officer, who is in the same position or above of an Executive Engineer or Assistant Director, may execute a contract for tenders submitted by the contractors in accord with the prices of works.

The contract price shall be approved by the head of the concerned ministries.

Work Order

25. Work Order is issued to the contractor to commence the work when a contract is executed with the contractor and deposits are fully furnished. The date stated in Work Order issued shall be mentioned in the Memorandum. Sample of Work Order is attached as **Annex (G)**.

Quality Control of works

26. Quality control is required for any work whether its size is large or small. Quality Control firms are employed for the important works. If necessary, consultant firms may be hired. Construction group may spend 8% of the project price for feasibility study, detailed design and consultant firm.

Below the amount of 1,000 million Kyat	-	8%
Between 1,000 and 2,000 million Kyat	-	7%
Above the amount of 2,000 million Kyat	-	6%

Note: The particular approval from the concerned ministry shall be required when foreign consultant firm is hired and the expense is over the amount mentioned above.

Chapter 3

Supervising the work

27. Unlike the works done as the Department's one, the works on contractor basis shall be carried out carefully. Otherwise there may be some disagreements with contractor as well as lower qualification of works. Therefore, engineers shall pay more attention on standards for their supervision of works when such works are operated with contractor basis. Moreover, they require special attention to the provisions of contract, departmental procedures and directives relation to the works. The key information for supervising the work are as follows.

Issuing the materials

28. When the materials are issued, the designated form must be used for such issues. The materials issued shall be the one which are actually required. As an evidence which would be used in case, the contractor shall sign that he receives all materials correctly.

Department shall issue the materials in time as the performance of work shall not be delayed. Thus, the required materials should be collected before the contract is executed. When materials are issued, it is important that the category and quantity must be correct. The issue should not be on paper. The contractor shall check carefully, when receiving, whether the category and quantity are correct or not. In the event that there is discrepancy in issuing the materials in future, the contractor may attribute to the Department.

Supervising the work

29. When a work is operated with contractor basis, supervisory engineer must manage the work all the time. As such, he can instruct not to use the unqualified materials and unacceptable work. If he may not give such instruction in time, the contractor may bear more cost and the disagreement may be happened. For example- a reject of beam which is already used in the floor will make the contractor more costly as such reject should be made at the time when the contractor has intended to use the unqualified beam. Likewise, the reject of rock for road at the quarry may save the cost than the reject of such rock after delivering to the site. Therefore, a careful supervision and instruction will help the performance of supervisory engineer and contractor.

30. When a work is being supervised, the following shall be examined.

- (a) The quality of materials are correct;
- (b) The performance is acceptable;
- (c) The work is in conformity with the design;

- (d) The standards are correct;
- (e) The work is in progress.

31. Most importantly, the examination of a piece of work shall be done before such work is covered by other piece of works. For example- digging the foundation line for the construction, laying the concrete foundation, foundation bricklaying shall be examined and measured before they are covered by ground land. Similarly, the enclosure of steel shall be examined before it is concreted in steel-concrete works. The contractor shall be given an instruction not to proceed the concrete work before a consent is made by the supervisory engineer concerned. These steps shall be taken into account in other similar works.

Order Book

32. It is required to have an Order Book when the works are carried out. The examination of the works shall be recorded in the Book. Particularly, the record shall be made for unqualified materials, degraded performance, non-conformity with the standards, dissatisfaction of progress in work and other instructions if necessary. After the records are written in the Book, the instructor shall sign with his designation. In the Order Book, the instructions may be recorded when the concerned engineers from every position, if necessary, inspect the works and they shall check the previous instruction, whether they are fully implemented or not, when they come and inspect next time.

The contractor shall fill his performance and compliance of the instructions of the concerned engineers. Thus, the Order Book shall have the column for instruction date, instructions and contractor's compliance.

Measuring the works

33. The completed works shall be measured in order to make payment to the contractor. In accordance with the article 358 of the Code of Public Works, the measuring of works may be done by Executive Engineer or Assistant Director, Assistant Engineer or Staff Officer and Junior Engineer or Branch Staff Officer who are concerned with the works. Measurement Book (Form 23) shall be used for any measurement. If there is any reason to record any measurement in Measurement Book, such measurements may be recorded in temporary Note Book issued by the Department as an exception. However, such detailed measurements shall be recorded as soon as possible in the Measurement Book.

34. As a Measurement Book is a basis document, it is important that it shall be used and kept in an appropriate manner. Hence, the procedure for keeping the Measurement Book, in accordance with article 358 of the Code of Public Works, is attached as **Annex (H)**.

35. Whenever the detailed measurements are recorded, the following shall be made as priority.

- (a) The full title of the work which is described in the Estimate;
- (b) The location of the work;
- (c) The name of contractor;
- (d) Contract No. and Date;
- (e) The date of measuring.

Whenever every measurement is recorded, the bookkeeper shall sign it with date. As a payment will be made depending on such measurements, the person who made measurements shall be responsible for the accuracy of such measurements. Before the measurements are recorded, there should be a note on the top of the page whether these measurements shall be done for final payment or payment with installment.

- For example –
- (a) First & Final payment;
 - (b) CC I & Running
 - (c) CC II & Running
 - (d) CC III & Final

36. In general, measurements shall be recorded with pin. If being difficult, pencil is allowed for recording. However, pin must be used at least in the column of Content or Area. Detailed measurements of the works which will be covered by another piece of works shall be recorded before such another works are started. In order to know easily, '**Recorded Measurements**' shall be written as a title of such measurements.

37. Abstract of cost shall be prepared after detailed measurements are carried out. The person who made measurements shall write as follows and sign at the bottom of the Abstract of cost.

'Measurements taken by me and satisfied that the claim is correct.'

Check Measurement

38. The recording of detailed measurements shall be rechecked. Depending on the size of the work, the measurement made by Junior Engineer or Branch Staff Officer is rechecked by Assistant Engineer or Staff Officer; or Executive Engineer or Assistant Director. The measurement recorded by Junior Engineer or Branch Staff Officer is rechecked by Executive Engineer or Assistant Director. In such case, it is not possible to recheck all measurements and therefore some measurements can only be rechecked. However, at least 5% to 10% shall be rechecked. The measurements rechecked shall be marked with pin, written as 'check' beside

such measurements and initialed with date by the inspector. Then the following shall be written in Measurement Book.

“Checked-Measured by me & Found Correct”

Sd.

Executive Engineer/ Assistant Director

Chapter 4

Payment and Forms of Payment

39. Nowadays as some works in the Department will be operated with contractor basis, Departmental Form 24, 26, 27 and 28 for Forms of Payment will be used. The explanation how to use the forms is described in brief as follows;

Departmental Form 24

40. This Form is used for all payment made in once for construction or procurement to the contractor. A sample form is attached as **Annex (I)**.

In the Form, estimate and all items of work described in contract shall be fully written in column 2. The number of contract and the number of estimate shall be fully written. Regarding to the matter of procurement, the supplier will issue their receipt forms. As this Form is a Form of Payment designated by the Department, the information stated in the Form shall be required for audit. Therefore, Form 24 shall be used for payment and the receipt of supplier should be attached as evidence only.

41. For making payment, drawing officer shall be Executive Engineer or Assistant Director for the amount of up to fifty million Kyat. Thus, Executive Engineer or Assistant Director who are designated as a drawing officer may make payment for the First & Final invoice of five million Kyat payable to the contractor. Any payment which exceeds such amount shall be sent to the office of the Chief Engineer or Director and pre-audited by the Account Department. Only after Pay Order is passed by Chief Engineer or Director, such payment will be made by Executive Engineer or Assistant Director.

Departmental Form 26

42. This Form is used for payment of materials delivered to the site; or of the works completed and measured; or of the works in which completion of work is estimated without measuring to the contractor. This Form is also used for payments with installment after measuring the completed works. However, it is not used for procurement.

43. When an advance payment for the materials delivered to the site, Executive Engineer or Assistant Director and an officer whose rank is not lower than them may allow to pay the amount which is equivalent to 75% of the delivered materials in cash. However, such payment shall be for the materials which are not perishable and on the condition that contractor shall absolutely take responsibility in a separate contract for waste, damage and loss.

A sample form is attached as **Annex (J)**.

Departmental Form 27

44. This Form is used for payment of construction and procurement to the contractor. It is used for payment with installment after measuring the completed works. But it is not used for advance payment, as Form 26, for the materials delivered to the site or for the works in which completion of work is estimated without measuring.

A sample form is attached as **Annex (K)**.

Departmental Form 27-A

45. This Form is used for Lump Sum Contract and not suitable for other types of contract. Detailed measurements are not required for payment with installment for this work. However, an invoice for such payment shall not exceed the value of actual completed works by the examination in sight or general measurement or other reasonable measure (which measure shall be described) and in the accord of the provisions of the contract; and at least an officer whose rank is not lower than Executive Engineer or Assistant Director shall approve on such invoice.

If any alternation or addition to the original form is made, such work shall be measured in details and described in the invoice separately.

A sample form is attached as **Annex (K)**.

Departmental Form 28

46. This Form is used for general payment which is not related to the payment under Departmental Form 24, 26 and 27. This Form requires the full description related to payment.

A sample form is attached as **Annex (L)**.

Interim Payment

47. When a contractor is under financial burden during the reviewing of payment with installment, interim payment may be made as an advance payment by Departmental Form 28 at the time of such reviewing. After reviewing process, the invoice which is reviewed shall be adjusted by deducting such interim payment. The interim payment shall be allowed only when it is in the accordance with the following conditions;

- (a) Contractor shall present his urgent requirement to the Executive Engineer or Assistant Director in person;
- (b) The proposed interim payment shall not be less than five hundred thousand Kyat each;

- (c) There is reasonable delay in making payment to the contractor when reviewing the invoice has an unavoidable delay.

Interim payment shall only be made for the invoice which is being reviewed for payment with installment, but not for final invoice. In addition, interim payment shall not exceed 75% of the net amount entitled to the contractor from the invoice which is being reviewed. Each installment shall be made at the interval of more than 30 days. Contractor shall apply for payment with installment.

Preparing the Work Authority

1. Preparing when contractor operates the whole work

(a)	Budget allotted	=	A
(b)	Deducted the contractor's profit (A x 9.09%) (-)	=	B
(c)	Amount which may be allowed to the contractor	=	(A - B)
(d)	Actual price (Net material and wages etc.)	=	C
(e)	Contractor's profit 10% (C x 10%)	=	D

	Total value	=	(C +D)

Note: (C+D) should not exceed (A-B).

2. Preparing when Department costs directly for materials

(a)	Materials performed by contractor and wages (exclude contractor's profit)	=	A
(b)	The prices of materials issued by Department	=	B
(c)	Contractor's profit (for Materials performed by contractor and wages) (A x 10%)	=	C

	Total value	=	(A+B+C)

The price to calculate for considering whether tender is required = (A+C)

Republic of the Union of Myanmar

Ministry of

Office of Chief Engineer/Director

State/Region

Township

Work Order and Terms and Conditions for the Work

No. :

Title of Work :

This Work Order is issued to the contractor for the works in the table described in the opposite side of the page with the prices in such table in accordance with the following terms and conditions.

Terms and Conditions for the Work

1. This Agreement and Work Order (hereinafter referred to as “Agreement”) is aimed to make payment for the works measured and approved by the concerned officer-in-charge (hereinafter referred to as “Officer”) when the works are actually completed without having stipulation of size of work and period.
2. This Agreement may be terminated at any time by the parties upon giving written notice.
3. All works under this Agreement shall be in conformity with not only the descriptions in the table of the opposite side of the page but also the standards for works stipulated by the Department. The concerned Officer rejects any work if he thinks such work is not in conformity with the standards stipulated. However, an Executive Engineer or Assistant Director who is in higher position than the concerned Officer may, if he thinks fit, accept the work with the reasonable price which is less than the price described in the table of the opposite side of the page.
4. For the works which is accepted with full rate or price, the concerned Officer or in accordance with his authorization shall make payment for the actual completed works after measuring.
5. Everyone who is under the age of 18 shall not be employed at the work.

6. Myanmar employees shall be recruited as much as possible for any portion of work.
7. Contractor shall not pay the wages which are lower than that of other similar jobs in domestic to the workers employed in his work. Furthermore, wages shall be paid in cash. In a special condition, wages shall be paid in kind partially after receiving the written consent from Executive Engineer or Assistant Director.
8. Any dispute arising out of or relating to this Agreement shall be submitted to and settled by Executive Engineer or Assistant Director. The decision of Executive Engineer or Assistant Director shall be final and binding upon the respective persons.

Executive Engineer / Assistant Director

..... Township

Contractor

Date:

Witness:

Table 1 of the Memorandum
Items of work and Prices to be paid

No.	Items of Work	Measurement unit (in words)	Tender prices on items of work per measurement unit	
			(in number)	(in words)

Executive Engineer or Assistant Director

Contractor

Republic of the Union of Myanmar

Ministry of

Office of Chief Engineer/Director

State/Region

Township

Work Order and Terms and Conditions for the Work

No. :

Title of Work :

This Work Order is issued to the contractor for the works in the table described in the opposite side of the page with the prices in such table in accordance with the following terms and conditions.

Terms and Conditions for the Work

1. This Agreement and Work Order (hereinafter referred to as “Agreement”) is aimed to make payment for the works measured and approved by the concerned officer-in-charge (hereinafter referred to as “Officer”) when the works are actually completed without having stipulation of size of work and period.
2. This Agreement may be terminated at any time by the parties upon giving written notice.
3. All works under this Agreement shall be in conformity with not only the descriptions in the table of the opposite side of the page but also the standards for works stipulated by the Department. The concerned Officer rejects any work if he thinks such work is not in conformity with the standards stipulated. However, an Executive Engineer or Assistant Director who is in higher position than the concerned Officer may, if he thinks fit, accept the work with the reasonable price which is less than the price described in the table of the opposite side of the page.
4. For the works which is accepted with full rate or lower price, the concerned Officer or in accordance with his authorization shall make payment for the actual completed works after measuring.
5. Everyone who is under the age of 18 shall not be employed at the work.
6. Myanmar employees shall be recruited as much as possible for any portion of work.

7. Contractor shall not pay the wages which are lower than that of other similar jobs in domestic to the workers employed in his work. Furthermore, wages shall be paid in cash. In a special condition, wages shall be paid in kind partially after receiving the written consent from Executive Engineer or Assistant Director.

8. Any dispute arising out of or relating to this Agreement shall be submitted to and settled by Executive Engineer or Assistant Director. The decision of Executive Engineer or Assistant Director shall be final and binding upon the respective persons.

Executive Engineer / Assistant Director
..... Township

Contractor

Date:

Witness:

Agreement on the Terms and Conditions for the Work

Definition

The terms in this Agreement on the Terms and Conditions for the Work shall have the similar meaning described as below:

“Executive Engineer or Assistant Director”	means Executive Engineer or Assistant Director who is responsible for the working group, project engineer who is in the same rank and deputy (or) associate project directors and their successors.
“Region or State Chief Engineer or Director”	means the above Executive Engineer or Director and an officer who is in the same rank and responsible for Region or State engineer, project engineer and project directors who are in the same rank.
“Ministry”	means the concerned ministry which offers contract.
“Contractor”	means a person who is selected for his tender submitted for this work.
“Terms and Conditions”	means any term and condition described hereunder.

1. Either party to this Agreement may terminate the Agreement at any time, if it desires, by giving written notice to the other party.
2. The contractor who agrees to perform all works under this Agreement (hereinafter referred to as “Work”) shall execute the work to be acceptable by Executive Engineer or Assistant Director, in accordance with the design and standards at the time of tendering, further designs issued, written instructions in details by Executive Engineer or Assistant Director and the explanations from time to time, so as he has to carry out the work with careful consideration by using the materials and wages effectively at the work. Otherwise Managing Director or Director General shall not accept the work and make payment. In performing the items of work described in Table 1, the works shall be done in accordance with the standards stipulated except the provisions stipulated separately and attached to the Agreement due to the incompatibility with the standards.

3. If the work executed and the materials used are degraded, Executive Engineer or Assistant Director shall replace such degraded work or materials and may deduct, in accordance with clause 7 of this Agreement, the cost incurred or the expense approved by Executive Engineer or Assistant Director for such replacement from the contractor's money.
4. Executive Engineer or Assistant Director may, by clause 2, accept the works which are unacceptable with the reasonable price which are lower than that of Table 1.
5. For the works which is accepted with full rate or lower price, the concerned Officer or in accordance with his authorization shall make payment for the actual completed works after measuring.
6. Each payment may be made for the works completed and measured at the interval of more than 30 days. But contractor shall apply in writing for such payment. Both parties shall furnish the final measuring as soon as possible at a reasonable time after the work under this Agreement is completed.
7. When payment is made for the works executed, contractor shall allow any officer on behalf of the Ministry the subtraction of 10% from the amount entitled under the Agreement. However, such subtraction shall not exceed the total amount Including deposit and such amount shall be kept as a performance guarantee. The ministry may deduct an amount to be paid by contractor due to any of the terms and conditions of this Agreement from such performance guarantee or any amount to which the contractor is entitled or will entitled.
8. If any building, road, fence or partition or landscape or farm land is damaged due to contractor or his employees, contractor shall repair at his own cost for the original conditions. If contractor refuses or fails and then Executive Engineer or Assistant Director may deduct the cost approved by himself from the contractor's money in accordance with clause 7.
9. Contractor shall take responsible for making fence, sign board and light to ensure public safety during the executing the work. Moreover, he shall be liable for any damage and injury to people or animal due to his performance or his employees. In addition to such events, contractor is responsible for compensation to his employees under Workmen's Compensation Act and its amendments and rules but not the Ministry's responsible. If the contractor fails to comply with the above responsibilities, Executive Engineer or Assistant Director has authority to deduct the cost approved by himself from the contractor's money in accordance with clause 7.
10. If contractor requests for works in writing, Executive Engineer or Assistant Director shall issue the materials described in Table 2. Among the materials issued by the Ministry, the Ministry will not take responsible to receive the return of the surplus materials before or after the work is completed. However, Executive Engineer or Assistant Director may receive if the materials are in good conditions without any defect and required to be used. The materials shall be in the possession of the Ministry until such materials issued are paid. Contractor shall not

remove, without having the written consent of Executive Engineer or Assistant Director, such materials from the site during the period of work which is not completed yet.

11. Contractor shall remove the remaining materials and machines at the site after the works under this Agreement is completed. Such materials and machines not removed shall be sold at the cost and risk of contractor in accordance with the instruction of Executive Engineer or Assistant Director and the net amount of money approved by Executive Engineer or Assistant Director shall be designated as contractor's money.

12. The performance guarantee shall not be returned to the contractor unless the materials and machines as mentioned in clause 11 above are removed from the site or the works are finally accepted. But Executive Engineer or Assistant Director may return any portion of such performance guarantee by holding some amount which would cover the cost to be likely paid by contractor.

13. Everyone who is under the age of 18 shall not be employed at the work.

14. Contractor shall recruit Myanmar employees who are appropriate to the work as much as possible. He shall employ them at least 25% or a percentage designated by Region or State Chief Engineer or Director from time to time. He may recruit less employees if it is approved that Myanmar employees are not available for the minimum percentage designated by Everyone who is under the age of 18 shall not be employed at the work.

15. Contractor shall not pay the wages which are lower than that of other similar jobs in domestic to the workers employed in his work. Furthermore, wages shall be paid in cash. In a special condition, wages shall be paid in kind partially after receiving the written consent from Executive Engineer or Assistant Director.

16. If Executive Engineer or Assistant Director may think that the works are carried out carelessly and not in conformity with the standards stipulated, contractor shall be given notice and Managing Director or Director General shall bear the wages and materials to execute the whole or any parts of works. The actual cost for such works shall be recovered from the contractor. The works so executed shall be deemed as it is carried out by the contractor and it shall be measured and paid to the contractor at the price agreed in the Agreement. Contractor, upon or after the receipt of notice, may terminate the Agreement by giving written notice for termination to the Executive Engineer or Assistant Director. But contractor shall be liable to pay the wages and the prices of materials paid by Executive Engineer or Assistant Director from the contractor's money entitled to him for the works completed until the date of termination.

17. Any dispute arising out of or relating to this Agreement shall be submitted to the Region or State Chief Engineer or Director. The decision of Region or State Chief Engineer or Director shall be final and binding upon the respective persons.

Contractor

Executive Engineer / Assistant Director

..... District

.....Township

Date:

Witness:

Table 1 of the Memorandum
Abstract of works, items of works and prices

Abstract of works	Tender prices submitted		remarks
	(in numbers)	(in words)	

Executive Engineer / Assistant Director

Contractor

Table 2 of the Memorandum

Materials issued by the Department and their prices at the column described below

No.	Category of material	Measurement unit (in words)	The price to be deducted per unit	
			(in words)	(in numbers)

Executive Engineer /

the place to issue materials to the contractor.....

Assistant Director

Contractor

Local group/

Construction group

Republic of the Union of Myanmar

Ministry of

Notices for Contractors

Tender forms shall be filled correctly and returned to the Department as the Department shall only accept the descriptions in the tender forms designated and approved by the Department.

A tenderer should submit his tender price only after taking careful calculation on measurements of work, items of work and standards because this category of work will be carried out in the manner of Lump Sum Value. If he is doubt or not clear about the matters relating to standards or designs, he shall submit such matter in writing together with his tender. As a result, such doubt or ambiguous matter shall be solved before his tender is accepted.

Tenderer shall ensure that the price filled shall be for the work until it is completed. Such price shall include the prices for materials, wages, the expenses for using machines and vehicles and the costs in order to perform the temporary or permanent works to be in conformity with the standards. In addition, such price shall include for the maintenance during the maintenance period.

Deposit for each tender shall be Kyat and paid to the Department.

When a tenderer is selected for his tender, he shall make an additional deposit. Such deposit shall be 5% of the tender price for the work. Moreover, 10 % of each and every payment with installment entitled to the contractor shall be deducted as deposit. Such deducted amount in total shall not exceed a half of the tender price.

The tenderer being selected shall require to follow carefully the terms and conditions for the contractors applicable to him.

Tender, Terms and Conditions for contractor (for construction work)

I/We shall perform the items of work described in Table 1 of the Memorandum with the prices and period stated therein in accordance with the standards, designs and guidance mentioned in clause 10-A of the Terms and Conditions for Contractors of this Contract. During the executing such works, the materials issued by Department with the prices described in Table 2 shall be used. Moreover, the Terms and Conditions mentioned above shall apply to other matters upon and after this date.

When this tender is accepted by on behalf of Department, I/ we shall agree to perform the provisions stated in Tables and the Terms and Conditions for Contractors. If there is a failure to do so, it is agreed that the amount of money described in the Terms and Conditions shall be paid as compensation to the Department.

Total in Kyat

(a) In cash

(b) Challan No..... of Branch No..... of Myanmar Economic Bank shall be attached and paid as an earnest money. The deposit shall be reimbursed if tender is not selected.

If tender is selected, it is agreed that the deposit paid shall be kept in Department as "Total Deposit" in accordance with the sub-clause (c) of the Memorandum and clause 1(a) of the Terms and Conditions for Contractors.

If I/we fails to commence the said work within a month upon the date when tender is accepted, the Contract is deemed terminated and all deposit which we paid shall be confiscated without harming other rights.

I/We acknowledge that a deposit amount Kyat as performance guarantee, in a similar way as the deposit is made, shall be paid within 7 days after receiving the notice for the acceptance of tender; and the work shall not be commenced until such performance guarantee is furnished.

This contract is signed before the following witness in on thedate of.....

Witness

Name.....
National Identity Card No.....
Occupation
Occupation
.....

Tenderer

Name.....
National Identity Card No.....
Occupation
Occupation
.....

The tender above is accepted on behalf of Public Works Department.

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

Date:

Memorandum

- (a) Title of work -
- (b) Total price of tender to execute the Items - Kyat
of work stated in Table 1 under the design
- (c) Amount of earnest money - Kyat
- (d) The maximum total amount of performance - Kyat
guarantee
- (e) Period for completion of work from the date -month
issued of Work Order to commence the work
(see clause 2(a) and 6(a) of the Terms and
Conditions)
- (f) Date of approval letter to commence work -
(clause 2(a) of the Terms and Conditions)
- (g) Agreed date for the completion of work -
(clause 2(a) and 7 of the Terms and Conditions)

Total amount of performance guarantee means earnest money + deposit + additional deposit.
(see clause 1(a) of the Terms and Conditions)

Table 1 of the Memorandum
Abstract of works, items of works and price

Abstract of work	Tender price submitted		remark
	(in numbers)	(in words)	

Executive Engineer / Assistant Director

Contractor

Table 2 of the Memorandum

Materials issued by the Department and their prices at the column described below

No.	Category of material	Measurement unit (in words)	Price to be deducted per unit	
			(in words)	(in numbers)

Executive Engineer /

the place to issue materials to the contractor.....

Assistant Director

Contractor

Local group/

Construction group

Republic of the Union of Myanmar

Ministry of

Notices for Contractors

Tender forms shall be filled correctly and returned to the Department as the Department shall only accept the descriptions in the tender forms designated and approved by the Department.

A tenderer should submit his tender price only after taking careful calculation on measurements of work, items of work and standards because this category of work will be carried out in the manner of Lump Sum Value. If he is doubt or not clear about the matters relating to standards or designs, he shall submit such matter in writing together with his tender. As a result, such doubt or ambiguous matter shall be solved before his tender is accepted.

Tenderer shall ensure that the price filled shall be for the work until it is completed. Such price shall include the prices for materials, wages, the expenses for using machines and vehicles and the costs in order to perform the temporary or permanent works to be in conformity with the standards. In addition, such price shall include for the maintenance during the maintenance period.

Deposit for each tender shall be Kyat and paid to the Department.

When a tenderer is selected for his tender, he shall make an additional deposit. Such deposit shall be 5% of the tender price for the work. Moreover, 10 % of each and every payment with installment entitled to the contractor shall be deducted as deposit. Such deducted amount in total shall not exceed a half of the tender price.

The tenderer being selected shall require to follow carefully the terms and conditions for the contractors applicable to him.

Tender, Terms and Conditions for contractor (for construction work)

I/We shall perform the items of work described in Table 1 of the Memorandum with the prices and period stated therein in accordance with the standards, designs and guidance mentioned in clause 10-A of the Terms and Conditions for Contractors of this Contract. During the executing such works, the materials issued by Department with the prices described in Table 2 shall be used. Moreover, the Terms and Conditions mentioned above shall apply to other matters upon and after this date.

When this tender is accepted by on behalf of Department, I/ we shall agree to perform the provisions stated in Tables and the Terms and Conditions for Contractors. If there is a failure to do so, it is agreed that the amount of money described in the Terms and Conditions shall be paid as compensation to the Department.

Total in Kyat

(a) In cash

(b) Challan No..... of Branch No..... of Myanmar Economic Bank shall be attached and paid as an earnest money. The deposit shall be reimbursed if tender is not selected.

If tender is selected, it is agreed that the deposit paid shall be kept in Department as “Total Deposit” in accordance with the sub-clause (c) of the Memorandum and clause 1(a) of the Terms and Conditions for Contractors.

If I/we fails to commence the said work within a month upon the date when tender is accepted, the Contract is deemed terminated and all deposit which we paid shall be confiscated without harming other rights.

I/We acknowledge that a deposit amount Kyat as performance guarantee, in a similar way as the deposit is made, shall be paid within 7 days after receiving the notice for the acceptance of tender; and the work shall not be commenced until such performance guarantee is furnished.

This contract is signed before the following witness in on thedate of.....

Witness

Name.....
National Identity Card No.....
Occupation
Occupation
.....

Tenderer

Name.....
National Identity Card No.....
Occupation
Occupation
.....

The tender above is accepted on behalf of Public Works Department.

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

Date:

Memorandum

- (a) Title of work -
- (b) Total price of tender to execute the Items - Kyat
of work stated in Table 1 under the design
- (c) Amount of earnest money - Kyat
- (d) The maximum total amount of performance - Kyat
guarantee
- (e) Period for completion of work from the date -month
issued of Work Order to commence the work
(see clause 2(a) and 6(a) of the Terms and
Conditions)
- (f) Date of approval letter to commence work -
(clause 2(a) of the Terms and Conditions)
- (g) Agreed date for the completion of work -
(clause 2(a) and 7 of the Terms and Conditions)

Total amount of performance guarantee means earnest money + deposit + additional deposit.
(see clause 1(a) of the Terms and Conditions)

Table 1 of the Memorandum
Abstract of works, items of works and price

Abstract of work	Tender price submitted		remark
	(in numbers)	(in words)	

Executive Engineer / Assistant Director

Contractor

Table 2 of the Memorandum

Materials issued by the Department and their prices at the column described below

No.	Category of material	Measurement unit (in words)	Price to be deducted per unit	
			(in words)	(in numbers)

Executive Engineer /

the place to issue materials to the contractor.....

Assistant Director

Contractor

Local group/

Construction group

Construction Contract
Terms and Conditions of Contract

Definition

The terms in this Terms and Conditions shall have the same meaning described as below:

“Executive Engineer or Assistant Director”	means Executive Engineer or Assistant Director who is responsible for the working group, project engineer who is in the same rank and deputy (or) associate project directors and their successors.
“Region or State Chief Engineer or Director”	means the above Executive Engineer or Director and an officer who is in the same rank and responsible for Region or State engineer, project engineer and project directors who are in the same rank.
“Contractor”	means a person who is selected for his tender submitted for this work.
“Work”	means temporary or permanent; or original or altered or amended or substituted or supplemented works to be performed under this Contract except construction works which are not reasonable in terms of subject or matters.
“Table”	means any table which is attached to this Contract.
“Memorandum”	means any memorandum which is attached to this Contract.
“Term and Condition”	means any term and condition described hereunder.

1.(a) Contractor shall provide performance guarantee and shall allow Executive Engineer or Assistant Director on behalf of the Department deduction of 10% from the payment with installment for the works completed in accordance with Condition 8-A. Such deduction shall not exceed a half of the tender price under sub-clause (b) of the memorandum and shall be kept by the Department as additional deposit. The total amounts of earnest money, deposit and additional

Additional deposit

deposit are deemed as total amount of performance guarantee stated in clause (d) of the Memorandum.

1.(b) Whenever payment will be made by the contractor or any money will be taken back from the contractor, contractor shall pay in cash to the Executive Engineer or Assistant Director or such amount shall be subtracted from the amount entitled under this contract or total amount of performance guarantee. The decrease in the total amount of performance guarantee stated in clause B(a) of the Terms and Conditions and sub-clause (d) of Memorandum due to deduction shall be replenished within 10 days after receiving written notice from Executive Engineer or Assistant Director.

Total amount of performance guarantee, money taken back from the contractor

2.(a) Contractor shall keep careful consideration on the completion period stipulated in clause (d) of the Memorandum. (Timeframe is deemed the essence of this Contract.) Such period shall begin from the date of written notice by Executive Engineer or Assistant Director under clause (f) of the Memorandum for commencing the work. The works shall be performed with the best efforts during the period of work.

Time is essence of the Contract

2.(b) Contract shall be terminated if the work is not completed within the completion period or the another period extended under clause 6(a) and 6(b) of the Terms and Conditions. Upon termination, Executive Engineer or Assistant Director shall take note in writing that such work should be completed during the designated time. The completed and acceptable work until the date of termination shall be measured for making payment and the performance guarantee shall be confiscated as compensation in accordance with clause B(a) of the Terms and Conditions and clause (d) of the Memorandum.

Compensation for failure to complete the work in time

2.(c) If contractor dies before the completion of work, an authority who accepts the work on behalf of the Department may, at his own discretion;

To perform after a contractor dies

- (1) allow a legal representative of such contractor to continue the work in accordance with the original terms and conditions.
- (2) may proceed under clause 4 of the Terms and Conditions after the Contract must be terminated. The confiscation of

performance guarantee may be exempted upon the termination made under this Term and Condition.

(3) If contractor suspends the work except the matter occurred under clause 6(a) of the Terms and Conditions; or Executive Engineer or Assistant Director believes that contractor neglects or fails to use the best effort or that fails to follow the Terms and Conditions, Executive Engineer or Assistant Director may notify to the contractor by giving notice to follow the Terms and Conditions for contractor strictly and use the reasonable efforts in works. Notice shall evidently include the failure and weakness of contractor. Such notice shall be implied to be served in accordance with this provision.

Notice for suspension or failure

4.(a) If contractor continues the failure until 14 days after notice is given under clause 3 of the Terms and Conditions or the failure described in the notice, an authority who accepts the work on behalf of the Department (1) may give notice to the contractor for the termination of contract. Then Executive Engineer or Assistant Director may confiscate total amount of performance guarantee of the contractor as described in clause 1(a) and 2-b of the Terms and Conditions and such confiscated amount shall be the account of the Department. (2) shall measure the completed works at the date of termination and Executive Engineer or Assistant Director makes payment with the reasonable price on such measurements. If any dispute arising relating to considering the price, the decision of Region Chief Engineer or Assistant Director shall be final for all parties in the Contract.

Termination of contract

4.(b) If contractor is in the action under clause 4 or contract is terminated under 2(b) or 2(c), contractor shall not claim for his damage by the reason that materials for works are bought or arranged to buy or offered to buy.

No compensation for termination or dissolution

4.(c) If contract is terminated under clause 4(a) or 2(b) or 2(c), Executive Engineer or Assistant Director on behalf of the Department shall enter the site and carry out the works to be completed by acquiring the machines and materials on the site or near or around the site. Executive Engineer or Assistant Director pays the reasonable price for such machines and materials so

Entitle to enter the site and acquire contractor's machines

acquired. If any dispute arising relating to considering the price, the decision of Region or State Chief Engineer or Director shall be final.

4.(d) Contract is terminated under clause 2(b), 2(c) or 4(a) or otherwise, Executive Engineer or Assistant Director may give notice to the contractor to remove machines and other materials from the site except the machines and materials acquired by Department under clause 4(c).

Removal of contractor's machines and materials

4.(e) If the machines and materials are not removed within a month after giving notice, Executive Engineer or Assistant Director on behalf of the Department may sell the machines and materials by tender basis. Such process of selling shall be at the risk of contractor and the remaining amount after deducting the expenses approved by the Executive Engineer or Assistant Director shall be considered as contractor's earnings. The machines and materials which are not sold at the tender shall be managed by the Department at its discretion and no compensation shall be claimed for such arrangement.

Selling contractor's machines and materials

5. Any failure to exercise the power assigned to the Department under any Terms and Conditions shall not be deemed a waiver of such provision.

No waiver

6.(a) If Executive Engineer or Assistant Director deems that the performance of work is delayed due to any event of Force Majeure or a notice for temporary suspension of work which is given by Executive Engineer or Assistant Director in accordance with clause 11(a) to add or alter the work as the requirement, an authority who accept this tender on behalf of the Department may extend the period of completion with the reasonable period without requiring compensation. When such extension is not consented in writing, no excuse is allowed for any event under clause 2(a) because of the failure to complete within the designated time stated in clause (e) of the Memorandum and a circumstance that the work will not be complete in time. The decision of an authority who accept this tender shall be final for contractor and all person concerned in relation to the cause of delay for work and extension of period.

6.(b) If the work is delayed due to other reasons rather than any cause

Extension of period

mentioned in clause 6(a), Executive Engineer or Assistant Director shall extend the period as he thinks fit and contractor shall be liable to pay compensation for such extension. The amount of compensation for the first extension shall be Kyat....., and for second and further extension shall be Kyat on each.

due to other causes

6.(c) If contractor wishes the period for work to be extended in accordance with clause 6(a) and 6(b), he shall submit in writing for extension describing the required period to the Executive Engineer or Assistant Director within 15 days from the first date when the delay happens; or from the date when a written notice for extension of period is given by Executive Engineer or Assistant Director. Even though such extension is submitted, contractor shall use his best efforts not to occur the delay during the whole period of work to meet the satisfaction of Executive Director and Assistant Director.

7.(a) When the work is completed in conformity with the designs, standards stipulated in clause 10(a) and the amendments in accordance with the clause 1-b, Executive Engineer or Assistant Director shall sign for the date of work completion to the contractor. For such issue, the work shall be deemed to have completed when the contractor removed the scaffolding, extra materials, garbage and etc.; and cleaned both inside and outside of the building and the site.

Date of work completion and signature

7.(b) If the contractor fails to clean the site, building and to remove scaffolding, extra materials and garbage after 10 days upon the expiry date of any extension period described in sub-clause (c)of the Memorandum, Executive Engineer or Assistant Director shall assign his representative to clean the building and the site; to remove scaffolding, extra materials and garbage and to tender at the contractor's costs and all costs shall be acquired from the contractor. Contractor shall have no right to claim for compensation of such acts of removing and cleaning of scaffoldings, extra materials and garbage. However, the contractor may claim the remaining amount from the sales price through tendering, which price is approved by Executive Engineer or Assistant Director, after deducting the costs for removing of machines, extra materials and garbage as well as the costs for tendering.

If contractor fails, Executive Engineer or Assistant Director should clean and remove

8.(a) Contractor may receive the payment with installment for the

Payment with

any work completed which are in conformity with the design and standards approved by the Executive Engineer or Assistant Director. Such payment with installment shall be lump sum approved by the Executive Engineer or Assistant Director based on the items of work completed. Such payment shall be in line with the total amount of final payment entitled to contractor for all works. Such payment with installment shall not be deemed the final acceptance of work and shall not prevent from removing any ramshackle work and unqualified work. In addition, such payment shall not adversely affect any performance of the Department under the Contract, any claim of money, any rights, final payment, tallying the records and the Contract.

installment shall be of measurement.

8.(b) Although the performance of final measuring will be notified in writing within a reasonable time, the measuring done by contractor or his representative or his agent shall be final for contractor and all person concerned.

Final measuring

9.(a) Contractor shall submit purchase order in advance to the Executive Engineer or Assistant Director for materials which will be issued by Department under Table 2. Contractor shall have no right for any claim and compensation in the event of delay in the performance of work due to the reason of the failure of submitting the purchase order.

Responsibility of contractor to request for materials issued

9.(b) Contractor may submit and request for in writing to the Executive Engineer or Assistant Director to issue any material which is not stated in Table 2 but is required for the best performance of the works. Then Executive Engineer or Assistant Director at his own discretion issues such materials at the place where the materials described in Table 2 is issued and shall ask for the price to be paid plus 10% for profit and service fee at the place where those are issued. Department shall have no responsibility for such materials and contractor shall not claim to extend the period for the delay in issuing of materials.

Issuing the materials described in Table 2

9.(c) Contractor shall use any material issued by Department for only the works under this Contract. The materials issued by Department shall be solely deemed as the materials of Department and kept until the Contract is completed or terminated. Therefore, such materials shall not be removed from the site for any reason. Contractor shall allow the inspection of Executive Engineer or Assistant Director at any time. The contractor shall not act as a normal receiver of such

Return the materials issued by Department for any reason

materials and therefore shall keep them safely without any damage in any situation.

10.(a) Contractor shall perform any or all of the works with the best practices including materials. He shall perform the works in accordance with any directives in writing, the designs and standards designated at the time of submitting tender, the designs, the detailed descriptions instructed by the Officer from time to time. If he fails to follow these provisions, the Department shall not be responsible to receive or make payment. The contractor shall perform the specification of any item of work described in Table 1 in accordance with the standards of the Department except the standards in the specific attachment due to the standards which are contrary to and unreasonable with those of the Department. If standards are not set for any item of work yet, contractor shall perform them in accordance with the requirements and directives. Contractor shall be responsible to request for such instructions in advance before he commences the work. Two sets of all designs which are required for the work shall be provided to the contractor free of charge. (Such a set of certified copy shall be placed at site.) Moreover, the standards relating to the work shall be made available at the office of Executive Engineer or Assistant Director during office hours. If contractor wishes to obtain the copies of designs, he shall buy them at the price designated by the Region or State Chief Engineer or Director.

Performing in accordance with standards, designs and directives

10. (b) If contractor believes that the detailed designs given to him by Executive Engineer or Assistant Director goes over the designs and standards under the original contract in terms of price of work, he may return the designs and ask for reconsidering or making the changes with them under the clause 11(b) in writing to the Executive Engineer or Assistant Director together with explanations. If such detailed designs are not returned before the commencement of work, the extra costs for such detailed designs shall not be claimed. Executive Engineer or Assistant Director shall make decision whether such detailed designs are officially altered or not.

Detailed designs

10.(c) If contractor discovers that there are differences between designs and standards or in designs, he shall immediately report to the Executive Engineer or Assistant Director. Then Executive Engineer or Assistant

Difference between designs and stipulations

Director shall explain such differences in writing. Measurements in number are more preferable than those in scales.

11. (a) During the performance of work, Executive Engineer or Assistant Director as he thinks fit shall have a right to make any addition, cancelation or alternation to the designs and standards under clause 10(a). Contractor shall agree to perform in accordance with such changes instructed in writing or with a form signed by Executive Engineer or Assistant Director and contractor shall not be deemed to be null and void due to such changes. If contractor is instructed to perform an extra work which is required to be carried out as a part of work, he shall execute such work with the similar terms and conditions and agreements stipulated for the original work. Unless such amendment is consented in writing, contractor shall not make any change and shall not claim for any extra work.

No termination of contract due to amendment

11. (b) If an extra work requires to extend the period of work, such extension period shall be considered under the conditions stated in clause 6(a).

Extension of period for changes

11.(c) Executive Engineer or Assistant Director shall calculate in details for the costs of changes due to any amendment in accordance with the addition, cancellation and alternation to the original designs and standards and Executive Engineer or Assistant Director and contractor shall sign and approve such calculation. According to the changes in price of work due to such costs, a new memorandum shall be prepared and signed by contractor and an authority who has accepted this tender. A new memorandum and the calculation in details approved by the contractor and Executive Engineer or Assistant Director shall be attached to the original contract and deemed as an integral part of such contract.

Authority for items of work not described in Table 1

12. (a) Executive Engineer or Assistant Director or his representative reserves a right to inspect and supervise at any time the work at site during or after the work or the work at contractor's factory. When a notice is given in advance that Executive Engineer or Assistant Director or his representative will visit to inspect the work during working hours or other working period, contractor himself or his competent representative shall be at work at that time.

Inspection of work

12. (b) Contractor shall notify Executive Engineer or Assistant Director

Notice before

in advance not less than 5 days before the work of covering is made in the event that the work is impossible to be checked, approved or taking the correct measurements when such work is covered. Such works shall not be covered unless the written consent of Executive Engineer or Assistant Director is received. If contractor will cover the work without notifying and receiving the consent, he shall perform according to the written request of the Executive Engineer or Assistant Director if he requires the contractor to unveil. If the contractor neglects or refuses to do so, Executive Engineer or Assistant Director may unveil at his own arrangement after giving notice and exceeding a reasonable time and the costs for such action approved by Executive Engineer or Assistant Director may be deducted from the contractor.

work of covering

13. (a) If Executive Engineer or Assistant Director believes that the current work and any part of work during the period of performance are not strong enough or not perfect or of unqualified performance; or that they are not in conformity with designs, standards and instructions of the Executive Engineer or Assistant Director; or that the unqualified materials are used, the Executive Engineer or Assistant Director for his objection of unqualified performance and materials (until those are measured and paid) may notify the contractor at his own costs to repair, remove or rebuild for such defects mentioned above of the whole work; or of any part of the work with the appropriate materials for the replacement as necessary.

Removal of unqualified works

13. (b) An authority who has accepted this contract may accept the unqualified works with the reasonable price which he thinks fit and approved in writing instead of the prices described in Table 1. If the contractor fails to reply for his acceptance within 10 days after receiving a written notice in which such reduced price is stated; or fails until 10 days upon the date of receiving notice given under clause 13(a), Executive Engineer or Assistant Director may assign other organization to perform. All or any part of the costs for such arrangement approved by Executive Engineer or Assistant Director shall be borne by the contractor and the Department shall deduct such costs from contractor.

If contractor fails to repair the unqualified works, Executive Engineer or Assistant Director may assign.

14. (a) If contractor or his employees and assistants happens any damage to building which they are carrying out or other building, fence, the site, any part of or the work being carried out on the ground

Contractor's responsibility for damages and defects

connected to the site; or any damage is occurred due to any performance of work or any unqualified performance or materials which are in conformity of designs, standards and instructions of Executive Engineer or Assistant Director during 2 years (until such work is approved and paid) upon the date when the certification for completion of work is issued by Executive Engineer or Assistant Director under clause 7(a), the contractor shall repair them at his own cost according to the instruction in writing by Executive Engineer or Assistant Director within the designated period.

after completion of work.

14. (b) If contractor fails to perform according to clause 14(a), Executive Engineer or Assistant Director shall assign other organization to repair them and the costs approved by the Executive Engineer or Assistant Director shall retain from the contractor. If the Department desires and after reviewing the position of contractor under the responsibility of clause 14(a), it shall have a right to keep in its hand the total amount of performance guarantee of the contractor, any part of deposit designated in writing by an authority who accepted the tender until the expiry of the period stipulated after the completion of work under clause 7(a) or the period of completion for repairing the unqualified works.

If contractor fails, Department repairs.

14. (c) Contractor shall provide insurance for full amount of the price of work in the name of the Department for any damage and loss by fire. Insurance shall be furnished with the company designated by the Department and such policy and receipt of premium shall be kept in the Department. If contractor fails to provide insurance, the Department may furnish such insurance and deduct the premiums from the payment or payment to be made to the contractor. Contractor shall perform with its best efforts to repair or rebuild the damages or loss after making the clearance of claims according to the policy of insurance. (Reasonable period shall be extended.) Any amount from the insurance policy shall be reimbursed to the contractor by installment with the approval of Executive Engineer or Assistant Director. Contractor shall not be entitled to any payment other than the amount from insurance for damaged buildings.

Insurance

15.(a) Contractor shall be responsible for all transportation of all materials to and from the site at his own costs and shall perform the works systematically by keeping the materials stated in

Making stake and planning the requirements by

Table 2. During the performance of the work, the contractor shall execute the original works or altered or substituted work, even though not stated in designs and standards, in accordance with the written instruction and directives of Executive Engineer or Assistant Director who has authority to instruct relating to the meaning and definition of designs and standards as in other matters. Contractor shall provide houses and cleaned water for his workers and warehouses according to the instruction of Executive Engineer or Assistant Director and they shall be cleaned and suited with good conditions for healthy for which Executive Engineer or Assistant Director may satisfy. Contractor shall arrange for the requirements for making stake for plot; and for providing free of charge the supportive materials to measure and to count in measuring and checking the works and materials at any time. Any material, machine, scaffold, temporary building shall not be removed unless the consent of Executive Engineer or Assistant Director.

contractor

15. (b) The contractor shall make stake for plot unless any restriction from Executive Engineer or Assistant Director. He shall make amendment at his own cost if such performance is inaccurate and and mistake. If contractor fails to amend it, Executive Engineer or Assistant Director may assign other organization to repair it and the costs approved by the Executive Engineer or Assistant Director shall retain from the contractor.

Responsibility of contractor to make stake for plot.

16. (a) The performance of the work under the Contract shall be supervised by the contractor himself or his competent representative. The instructions of Executive Engineer or Assistant Director to such representative shall be deemed as those to the contractor.

Appointment of the contractor's representative

16.(b)When Executive Engineer or Assistant Director requests the contractor in writing, contractor shall dismiss immediately his unqualified workers and those who act unreasonably among his foremen, workers or other employees relating to the performance of the work and shall not employ them again without any written consent of Executive Engineer or Assistant Director.

Power of Executive Engineer or Assistant Director to dismiss

17. Executive Engineer or Assistant Director may at his own discretion arrange to lend the machines owned by the Department free of charge to the contractor for work. Such issuing of machines shall be made at

Lending the machines owned by Department

the place stated in Table 2 and delivering of such machines from and to such place shall be in account of contractor. Moreover, contractor shall bear the costs to repair any damage of such machines to be the likely original and such cost shall be approved by Executive Engineer or Assistant Director and retained by the Department from the contractor.

18. Contractor shall not transfer or sub-contract the work under the Contract without the written consent of Executive Engineer or Assistant Director. If contractor transfers or sub-contract the work mentioned above without the consent of Executive Engineer or Assistant Director, or he becomes bankruptcy or in a petition of bankruptcy or makes an agreement for the benefits of his creditors, an authority who has accepted this tender shall make an action on behalf of the Department under clause 4(a). In such action, notice under clause 3 shall not be required.

Action against transfer, sub-contract

19. Contractor shall be responsible for making fence, sign board and light to ensure public safety during the executing the work. Moreover, he shall be liable for any damage and injury to people or animal due to his performance or his employees. In addition to such events, contractor is responsible for compensation to his employees under Workmen's Compensation Act and its amendments and rules but not the Ministry's responsible. If the contractor fails to comply with the above responsibilities, Executive Engineer or Assistant Director has authority to acquire the cost approved by himself from the contractor.

Damages of property or people, fence, lighting, Workmen's Compensation Act

20. The agreed prices stated in Tables shall include all costs to implement under these provisions of the clauses herein. The Department shall not be responsible for such matters.

Prices include all costs to implement under other terms and conditions.

21. Contractor shall recruit Myanmar employees who are appropriate to the work as much as possible. He shall employ them at least 25% or a percentage designated by Regional Officer from time to time. He may recruit less employees if it is approved that Myanmar employees are not available for the minimum percentage designated by Executive Engineer or Assistant Director.

Employ Myanmar employees

22. Everyone who is under the age of 18 shall not be employed at the work.

No employment of under-aged.

23. Contractor shall not pay the wages which are lower than that of other similar jobs in domestic to the workers employed in his work. If any dispute arises, the decision of Managing Director or Director General shall be final. Contractor shall pay wages in cash. In a special condition, wages shall be paid in kind partially after receiving the written consent from Executive Engineer or Assistant Director.

Reasonable wages shall be paid in cash.

24. If a notice or other correspondence requires to be served to the contractor relating to a term and condition, such notice is evidently deemed to be served when it is registered at and delivered by post to the address which is stated in the Contract at the time of signing thereof by contractor or the latest address which is informed by contractor in writing to the Executive Engineer or Assistant Director or the latest address which is in the knowledge of.

Notice to contractor

25. All works under this Contract shall be executed under the Instruction and agreement of Executive Engineer or Assistant Director. Executive Engineer or Assistant Director shall have an authority to instruct which work or how the work shall start and how it should be carried out from time to time.

To perform under the instruction of Executive or Assistant Director.

26. If contractor does not agree with the issuing of approval by Executive Engineer or Assistant Director under these clauses, he may appeal such issuing to the Managing Director or Director general in writing within 15 days after receiving such issuing. The decision of Managing Director or Director General relating to such matters, standards, designs, the definition of instructions under clause 10(a), materials used and performance of work shall be final and binding upon contractor and all person concerned with such matters thereof.

The decision of Managing Director or Director General shall be final.

27. When the contractor is of a partnership company limited and any change is made in its composition, such change shall be notified to the Executive Engineer or Assistant Director in writing. If the shares of partnership are dissolved or company limited is winded up, it shall be taken in action under clause 2(c).

Change of construction company

28. When the contractor has fulfilled the whole work to meet the satisfaction of Executive Engineer or Assistant Director and final payment is made, the remaining of the total amount of performance guarantee under clause 14(b) shall be reimbursed to the contractor after deducting the amount to be paid under this Contract or these terms and conditions.

Reimburse the total amount of performance guarantee.

29. If contractor fails to comply any of the terms and conditions, he shall be liable for compensation of Kyat to the Department according to the decision of Executive Engineer or Assistant Director. If the action is not taken under clause 4(a), he shall be liable to pay whether notice is given under clause 3 or not. All compensation paid under the terms and conditions shall be deemed to be for the actual damage.

compensation under Terms and Conditions

30. Contractor shall abide the existing laws of the Republic of the Union of Myanmar. The headings describing beside the terms and conditions shall not affect the validity.

Miscellaneous

**Tender for procurement and
Terms and Conditions for Contract**

I/We submit this tender to procure the materials described according to the category of work for the Ministry of(hereinafter referred to as the “Ministry”) within the period stipulated in Table 1 of the Memorandum, in accordance with the standards mentioned in clause 10 (a) of the terms and conditions and in the attachment hereto when Executive Engineer or Assistant Director instructs to procure the materials with the support of materials to be issued under Table 2 by the Department and to perform for other matters in conformity with the terms and conditions of the contract.

Whenon behalf of the Department accepts the tender, I/we agree to abide the provisions mentioned in the tables above and the terms and conditions of the contract. If fails, the amount of money described in the terms and conditions of the contract shall be confiscated as compensation for the Department.

Total in Kyat

(a) In cash

(b) Challan No..... of Branch No..... of Myanmar Economic Bank shall be attached and paid as an earnest money. The deposit shall be reimbursed if tender is not selected.

If I/we fails to commence the said work within a month upon the date when tender is accepted, the Contract is deemed terminated and all deposit which we paid shall be confiscated without harming other rights.

I/We acknowledge that a deposit amount Kyat as performance guarantee, in a similar way as the deposit is made, shall be paid within 5 days after receiving the notice for the acceptance of tender; and the work shall not be commenced until such performance guarantee is furnished.

This Contract is signed before the following witness in on thedate of.....

Witness

Name.....

National Identity Card No.....

Occupation

Tenderer

Name.....

National Identity Card No.....

Occupation

Address

Address

.....

.....

The tender above is accepted on behalf of Public Works Department.

.....

.....

.....

.....

Date:

Memorandum

- (a) Total price of tender stipulated in Table 1 hereunder - Kyat
- (b) Amount of earnest money - Kyat
- (c) The maximum total amount of performance guarantee - Kyat
- (d) Period for completion of work from the date issued of Work Order to commence the work (see clause 2(a) and 6(a) of the Terms and Conditions) -month
- (e) Date of approval letter to commence work (clause 2(a) of the Terms and Conditions) -
- (f) Agreed date for the completion of work (according to clause 2(a) and 7 of the Terms and Conditions) -

Total amount of performance guarantee means earnest money + deposit + additional deposit.
(see clause 1(a) of the Terms and Conditions)

Table 1 of the Memorandum

Materials to be procured, place for procurement and price to be paid

Place for procurement		Category of Materials and place for delivery	Quantity for procurement	Price submitted by tender		Unit to be paid	Tender price for each item	
From	To			In Words	In Numbers			

Executive Engineer

Total tender price (in words) Kyat

Contractor

/ Assistant Director

(in numbers) Kyat

Table 2 of the Memorandum

Materials issued by the Department and their prices at the column described below

No.	Category of material	Measurement unit (in words)	Price to be deducted per unit	
			(in words)	(in numbers)

Executive Engineer /

the place to issue materials to the contractor.....

Assistant Director

Contractor

Contract for Procurement

Terms and Conditions of Contract and Standards (attached)

The terms in this Terms and Conditions shall have the same meaning described as below:

“Executive Engineer or Assistant Director”	means Executive Engineer or Assistant Director who is responsible for the working group, project engineer who is in the same rank and deputy (or) associate project directors and their successors.
“Region or State Chief Engineer or Director”	means the above Executive Engineer or Director and an officer who is in the same rank and responsible for Region or State engineer, project engineer and project directors who are in the same rank.
“Contractor”	means a person who is selected for his tender submitted for this work.
“Work”	means temporary or permanent; or original or altered or amended or substituted or supplemented works to be performed under this Contract except construction works which are not reasonable in terms of subject or matters.
“Table”	means any table which is attached to this Contract.
“Memorandum”	means any memorandum which is attached to this Contract.
“Term and Condition”	means any term and condition described hereunder.

Contract for Procurement

Terms and Conditions of Contract and Standards (attached)

1.(a) Contractor shall provide performance guarantee and shall allow Executive Engineer or Assistant Director on behalf of the Department deduction of 10% from the payment with installment for the works completed in accordance with Condition 8-A. Such deduction shall not exceed a half of the tender price under sub-clause (b) of the memorandum and shall be kept by the Department as additional deposit. The total amounts of earnest money, deposit and additional deposit are deemed as total amount of performance guarantee stated in clause (c) of the Memorandum.

Additional deposit

Total amount of performance guarantee

1.(b) Whenever payment will be made by the contractor or any money will be taken back from the contractor, contractor shall pay in cash to the Executive Engineer or Assistant Director or such amount shall be subtracted from the amount entitled under this contract or total amount of performance guarantee. The decrease in the total amount of performance guarantee stated in clause 1(a) of the Terms and Conditions and sub-clause (c) of Memorandum due to deduction shall be replenished within 10 days after receiving written notice from Executive Engineer or Assistant Director.

Money taken back from the contractor

2.(a) Contractor shall keep careful consideration on the completion period stipulated in clause (d) of the Memorandum. (Timeframe is deemed the essence of this Contract.) Such period shall begin from the date of written notice by Executive Engineer or Assistant Director under clause (e) of the Memorandum for commencing the work. The works shall be performed with the best efforts during the period of work.

Time is essence of the Contract

2.(b) Contract shall be terminated if the work is not completed within the completion period or the another period extended under clause 6(a) and 6(b) of the Terms and Conditions. Upon termination, Executive Engineer or Assistant Director shall take note in writing that such work should be completed during the designated time. The completed and acceptable work until the date of termination shall be measured for making payment and the performance guarantee shall be confiscated as compensation in accordance with clause 1(a) of the Terms and Conditions and clause (c) of the Memorandum.

Failure to complete the work in time

2.(c) If contractor dies before the completion of work, an authority who accepts the work on behalf of the Department may, at his own discretion;

To perform after a contractor dies

(1) allow a legal representative of such contractor to continue the work in accordance with the original terms and conditions.

(2) may proceed under clause 4 of the Terms and Conditions after the Contract must be terminated. The confiscation of performance guarantee may be exempted upon the termination made under this Term and Condition.

(3) If contractor suspends the work except the matter occurred under clause (a) of the Terms and Conditions; or Executive Engineer or Assistant Director believes that contractor neglects or fails to use the best effort or that fails to follow the Terms and Conditions, Executive Engineer or Assistant Director may notify to the contractor by giving notice to follow the Terms and Conditions for contractor strictly and use the reasonable efforts in works. Notice shall evidently include the failure and weakness of contractor. Such notice shall be implied to be served in accordance with this provision.

Notice for suspension or failure

4.(a) If contractor continues the failure until 14 days after notice is given under clause 3 of the Terms and Conditions or the failure described in the notice, an authority who accepts the work on behalf of the Department -

Termination of contract

(1) may give notice to the contractor for the termination of contract. Then Executive Engineer or Assistant Director may confiscate total amount of performance guarantee of the contractor as described in clause 1(a) and 2-b of the Terms and Conditions and such confiscated amount shall be the account of the Department; (2) shall measure the completed works at the date of termination; (3) such measured work shall be paid with the price stipulated in Table 1.

4.(b) If contractor is in the action under clause 4(a) or contract is terminated under 2(b) or 2(c), contractor shall not claim for his damage by the reason that materials for works are bought or arranged to buy or offered to buy.

No compensation for termination or dissolution

4.(c) If the machines and materials are not removed within a month after giving notice, Executive Engineer or Assistant Director on behalf of the Department may sell the machines and materials by tender basis. Such process of selling shall be at the risk of contractor and the remaining amount after deducting the expenses approved by the Executive Engineer or Assistant Director shall be considered as contractor's earnings. The machines and materials which are not sold at the tender shall be managed by the Department at its discretion and no compensation shall be claimed for such arrangement.

Taking measures for contractor's machines and materials

5. Any failure to exercise the authority assigned to the Department under any Terms and Conditions shall not be deemed a waiver of such provision. The Department shall have a right to use authority if there is a contractor's failure. Such exercising of authority shall not exclude any compensation to be paid for the past and future by the contractor.

No waiver Contractor's responsibility for compensation

6.(a) If Executive Engineer or Assistant Director deems that the procurement of materials is delayed due to any event of Force Majeure or hazardous weather or a notice for temporary suspension of work which is given by Executive Engineer or Assistant Director or any other reasonable reason, an authority who accept this tender on behalf of the Department may extend the period of completion with the reasonable period without requiring compensation. When such extension is not consented in writing, no excuse is allowed for any event under clause 2(a) because of the failure to complete within the designated time stated in clause (e) of the Memorandum and a circumstance that the work will not be complete in time. The decision of an authority who accept this tender shall be final for contractor and all person concerned in relation to the cause of delay for work and extension of period.

Extension for delay

6.(b) If the work is delayed due to other reasons rather than any cause mentioned in clause 6(a), Executive Engineer or Assistant Director shall extend the period as he thinks fit and contractor shall be liable to pay compensation for such extension. The amount of compensation for the first extension shall be Kyat....., and for second and further extension shall be Kyat on each.

Extension of period due to other causes

6.(c) If contractor wishes the period for work to be extended in

Contractor's

accordance with clause 6(a) and 6(b), he shall submit in writing for extension describing the required period to the Executive Engineer or Assistant Director within 15 days from the first date when the delay happens. Even though such extension is submitted, contractor shall use his best efforts not to occur the delay during the whole period of work to meet the satisfaction of Executive Director and Assistant Director.

application for extension

7.(a) Contractor shall notify the schedule of procurement in writing to the Executive Engineer or Assistant Director.

Notice for the schedule of procurement

7.(b) Executive Engineer or Assistant Director shall issue the certificate of the completion of procurement upon the date when procurement of materials is completed in accordance with the standards stated in clause 1(a).

Certification of completion of work

8.(a) Contractor may receive the payment with installment for the any work procured which are in conformity with the standards. Such payment with installment shall be based on the measuring. Such payment shall be in line with the total amount of final payment entitled to contractor for all works. Such payment with installment shall not be deemed the final acceptance of work and shall not prevent from removing any ramshackle work and unqualified work. In addition, such payment shall not adversely affect any performance of the Department under the Contract, any claim of money, any rights, final payment, tallying the records and the Contract.

Payment with installment for procurement

8.(b) Although the performance of final measuring will be notified in writing within a reasonable time, the measuring done by Executive Engineer or Assistant Director or his authorized person shall be final for contractor and all person concerned if contractor or his representative fails to attend.

Final measuring and payment

9.(a) Contractor shall submit purchase order in advance to the Executive Engineer or Assistant Director for materials which will be issued by Department under Table 2. Contractor shall have no right for any claim and compensation in the event of delay in the performance of work due to the reason of the failure of submitting the purchase order. Contractor shall be responsible to meet the requirements under the

Request for purchase order for materials to be issued by Department

Dynamite Act in relation to the dynamite and the Department shall not liable for any matter relating to the contractor's negligence and failure.

9.(b) Contractor shall use any material issued by Department for only the works under this Contract. The materials issued by Department shall be solely deemed as the materials of Department and kept until the Contract is completed or terminated. Therefore, such materials from the site for any reason or from the place where the other materials are available shall not be removed. Contractor shall allow the inspection of Executive Engineer or Assistant Director at any time. The contractor shall not act as a normal receiver of such materials and therefore shall keep them safely without any damage in any situation.

Department owns materials until the completion of work

9.(c) When the Department requires the materials which is issued by the Department and of in good conditions and unused and the Executive Engineer or Assistant Director requests for the contractor to return them in writing, the contractor shall return the materials so requested to the place which are mentioned in the notice. If there is no request in writing, materials are not be required to return. The contractor shall have no right to claim for compensation for the loss of materials which are issued by the Department mentioned above and unused.

Return the materials issued by Department for any reason

10.(a) All procurement shall be in conformity with the descriptions in Table 1 and the sample if the contractor submitted the sample together with the tender. In addition, such procurement shall be in accordance with the standards of the Department except the standards in the specific attachment due to the standards which are contrary to and unreasonable with those of the Department. Otherwise, the Department shall not be responsible to receive or pay for such materials except the acceptance in favour under clause 10(a).

Standards for procurement

10. (b) If the Executive Engineer or Assistant Director considers that the materials procured are not fully in conformity with the standards mentioned above, the Executive Engineer or Assistant Director may designate the reasonable and proportionate price from the prices listed in Table 1 for such materials. The contractor shall reply in writing within 10 days after receiving the notice of the offer price made by Executive Engineer or Assistant Director.

Rejected materials

If the contractor fails to reply, Executive Engineer or Assistant Director have a right to inform the contractor to remove such rejected materials within a reasonable time from the place for procurement shown in Table 1. When the contractor fails to remove such materials Executive Engineer or Assistant Director on behalf of the Department shall carry out in accordance with the clause 4(d). Contractor shall be responsible for compensation under clause 2(b) as the work may not be considered to be completed in time due to the shortage of materials after rejection.

11. Contractor shall not transfer or sub-contract the work under the Contract without the written consent of Executive Engineer or Assistant Director. If contractor transfers or sub-contract the work mentioned above without the consent of Executive Engineer or Assistant Director, or he becomes bankrupt or in a petition of bankruptcy or makes an agreement for the benefits of his creditors, an authority who has accepted this tender shall make an action on behalf of the Department under clause 4(a) without giving notice under clause 3.

Action against transfer, sub-contract

12. Contractor shall be liable for any damage to the strength of buildings and decoration; and people, animals and property due to his performance or his employees to pay compensation for his employees under Workmen's Compensation Act and its amendments and rules but not the Ministry's responsible. If the contractor fails to comply with the above responsibilities, Executive Engineer or Assistant Director has authority to deduct the cost approved by himself from the contractor.

Damages of building, person, etc.

13. Contractor shall arrange at his own cost tools, machines, equipments, workers and materials in order to execute the work systematically and properly except the matters mentioned in Table 2.

To provide machines and tools by contractor

14.(a) The works shall be always supervised by the contractor himself or his competent representative. The instructions of Executive Engineer or Assistant Director to such representative shall be deemed as those to the contractor.

14.(b) When Executive Engineer or Assistant Director requests the

Power of dismiss

contractor in writing, contractor shall dismiss immediately his unqualified workers and those who act unreasonably among his foremen, workers or other employees relating to the performance of the work and shall not employ them again without any written consent of Executive Engineer or Assistant Director.

the contractor's employees

15.(a) The agreed prices stated in Tables shall include all costs to implement under these provisions of the clauses herein. The Department shall not be responsible for such matters.

Prices include all costs to implement under the terms and conditions.

15.(b) If contractor fails to comply any of the terms and conditions, he shall be liable to pay Kyat 500,000 for each failure even notice is given under clause 3 according to the decision of Executive Engineer or Assistant Director except the action is not taken under clause 4(a). The compensation paid under the terms and conditions shall be deemed to be the damage of the Department even though the actual damage is happened or not.

Compensation for failure under the terms and conditions

16. Contractor shall employ at least 25% of Myanmar employees except it is approved that Myanmar employees are not available for the minimum percentage designated by Executive Engineer or Assistant Director.

Employ Myanmar employees

17. Everyone who is under the age of 18 shall not be employed at the work.

No employment of under-aged.

18. Contractor shall not pay the wages which are lower than that of other similar jobs in domestic to the workers employed in his work. If any dispute arises relating to the local wages, the decision of Region or State Chief Engineer or Director shall be final and binding upon the contractor and all person concerned. Contractor shall pay wages in cash. In a special condition, wages shall be paid in kind partially after receiving the written consent from Executive Engineer or Assistant Director.

19. If a notice or other correspondence requires to be served to the contractor relating to a term and condition, such notice is evidently deemed to be served when it is registered at and delivered by post to the address which is stated in the Contract at the time of signing

Notice to contractor

thereof by contractor or the latest address which is informed by contractor in writing or the latest address registered at post office which is in the knowledge of.

20. If contractor does not agree with the issuing of approval by Executive Engineer or Assistant Director under these clauses, he may freely appeal such issuing to the Region or State Chief Engineer or Director in writing within 15 days after receiving such issuing. The decision of Region or State Chief Engineer or Director relating to such matters, the definition of standards for the quality of the materials shall be final and binding on all person concerned in the Contract.

The decision of Region or State Chief Engineer of Director shall be final.

21. When the contractor is of a partnership company limited and any change is made in its composition, such change shall be notified to the Executive Engineer or Assistant Director in writing. If the shares of partnership are dissolved or company limited is winded up, it shall be taken in action under clause 2(c).

Change of construction company

22. When the contractor has fulfilled the whole work to meet the satisfaction of Executive Engineer or Assistant Director and the payment is made, the remaining of the total amount of performance guarantee shall be reimbursed to the contractor after deducting the amount to be paid under this Contract or these terms and conditions.

Reimburse the total amount of performance guarantee.

23. Contractor shall abide the existing laws of the Republic of the Union of Myanmar. The headings describing beside the terms and conditions shall not affect the validity.

Miscellaneous

Republic of the Union of Myanmar

Ministry of

Work Order

Tender No.

Contractor

Title of work

Contract No.

Date

You are kindly informed that the following are the estimated quantity for work/ procurement to be performed in accordance with the terms and conditions of the contract mentioned above.

Title of work	Estimated quantity	Remark

Assistant Engineer/ Executive Engineer

Date

Measurement Book

1. Measurement books are the fundamental records for performance of work and procurement and therefore the importance of such books are not underestimated. When the contractor leaves the work permanently before his work is completed, the work completed is measured with them. The notice for measuring shall be given in advance. When the contractor does not attend, Assistant Engineer/ Staff Officer or any officer whose rank is higher than their position shall measure the works. The detailed measurements for work and procurement shall be recorded in the measurement book. But when there is a Standard Measurement Book, the detailed measurement is not required and the concerned officer in charge shall sign and approve that he has visited and checked the work described in the invoice and found the work is actually executed.

2. Executive Engineer or Assistant Director shall check and measure for the final invoice of the work which price exceeds an estimated amount of 500,000 Kyat. Assistant Engineer/ Staff Officer shall record the measurement as much as possible. In particular, Assistant Engineer/ Staff Officer are assigned for the work which has no estimate yet only if the situation is unavoidable. If they are assigned for such work, the reason for such assignment shall be recorded. Executive Engineer or Assistant Director shall check such work in a reasonable time.

3. Foundation works shall be measured by Assistant Engineer or Staff Officer before covering with ground land. When an authority is impossible to carry out such measuring and he assigns it to Assistant Engineer or Staff Officer, they shall submit the measurement book which they have filled and the design of foundation. When Assistant Engineer or Staff Officer assigns such measuring work to Junior Engineer or Branch Staff Officer, the measuring shall be checked in accordance with one of the following methods and endorsed before payment for invoice is made;

- (a) Although new work which price exceeds 2 million Kyat and maintenance work which price exceeds 500,000 Kyat requires being checked and measured, it does not mean all are re-measured. Only the reasonable amount of work shall be checked. The measurement being checked shall be marked in the measurement book and signed by such engineer or officer with date. If error is found, correction is made and initialed. When many errors are found in measurements, examiner may reject it and the reason of such rejection is recorded. Next measurement shall be done by Assistant Engineer or Staff Officer himself; or Junior Engineer or Branch Staff Officer is assigned, examination on measuring shall be done again.
- (b) If payment may be delayed due to not carrying out measuring work yet, Assistant Engineer or Staff Officer shall compare the measurements with estimates.

Executive Engineer or Assistant Director himself shall perform measuring work in a reasonable time. Particularly, collection of materials shall be examined.

4. Abstract of cost shall be described with pin below the measurements.
5. The separate measurement book is necessary for heavy works. The title of work shall be written on such separate measurement book and such book shall be used only for such work. Other books should be used for other works. Recording of the measurements of work on note book shall be avoided. If recording on note book is unavoidable, such measurements shall be filled in the measurement book at the soonest and shall describe the reference of the measurements in note book. Receiving and issuing of materials may be written in measurement book or note book. However, receiving of materials for which payment will be made shall be filled in measurement book.
6. If the works are carried out by the department's employees, payment order is made only after the completed works described in Master Roll is compared with the descriptions in measurement book.
7. Every office of the Executive Engineer or Assistant Director shall keep measurement books which are registered and numbered. The office which issues books, the dates of issuing and return of the books shall be recorded in registered book. When an engineer or an officer transfers, they shall be handed over to next officer and such handing over is remarked and signed below the last records. The office of the Executive Engineer or Assistant Director is the last place to keep measurement books. When the measurement book is full of records, it shall be returned to the office of the Executive Engineer or Assistant Director. Even records are not filled in the entire measurement book, it shall be returned once in two years. Executive Engineer or Assistant Director will decide whether such book not being filled fully may be re-issued or kept. Though the measurement book for heavy work is filled completely, it may be kept at the office of the Assistant Engineer or Staff Officer until the work is completed. However, they shall be sent each in two years to the office of the Executive Engineer or Assistant Director. Also the office of the Assistant Engineer or Staff Officer shall have measurement books and registered books. The name of engineer or officer who issues, the dates of issuing and receiving back shall be recorded in such book. Executive Engineer or Assistant Director shall examine the register book of the office of the Assistant Engineer or Staff Officer from time to time. Region or State Chief Engineer or Director shall also examine from time to time. If measurement book is lost, the cancellation shall only be made by Managing Director or Director General.
8. Page numbers shall be printed in measurement books. The descriptions in the book shall be made only on one side without blank. If a description is left by mistake, such page shall be cancelled by using diagonal and then signed. All filling shall be written with pin as much as possible. If not possible and pencil is used, pin has to be used at least in the column of 'Content or Area'. Pin should not be used to repeat on the descriptions with pencil. None of such

descriptions shall be erased with eraser. If there is an error, such error shall be struck-through and the correction shall be filled and initialed with date.

9. The detailed explanations relation to the measurement book may be observed in the paragraph 358, Volume 1 of the Code of Public Works and paragraphs 279 and 280 of the Code of Accounts, Public Works.

Form 24

First and Final Invoice

1. Receipt No. of Accounts book Date
2. Title of work/Title of Account
3. Name of applicant
4. No. and date of Contract or Order
5. Estimated price/ budget allotment

No.	Title of work or type of materials procured	Measurement	Rate	Amount completed or quantity being procured	Total cost
1	2	3	4	5	6
				Total	

No. of Measurement Book Name of who prepares invoice

No. of page Signature

Date Title

Payment order – Total in Kyat (in words Kyat) is allowed to be paid.

Authorized person

Signature

Title

I myself have paid in cash/no. of cheque on the date

Cashier

Signature.....

Title.....

I have received total amount of Kyat (in words)

Witness

Applicant

Form 26

Invoice for Payment in Installment

1. Receipt No. of Accounts book and Date
2. Name of Contractor
3. Title of work
4. No. and Date of current invoice
5. Previous invoices
6. No. and Date of Contract

‘Part -1’ Performance of work

Advance payment for the work not being measured			Category of work (to list by title, sub-group of work under estimates)	Meas-urement	Rate	No.of works completed up to date by measurement book	Price of work based on actual measurement		Re-mark
price paid up to previous invoice	price paid under current invoice	total price paid up to date					total up to date	total under current invoice	
1	2	3	4	5	6	7	8	9	10

‘Part -2’

Advance payment for materials brought to Site

No. of remaining materials up to previous invoice	“minus” No. of additional use	Remain-ing Include-ing further mate-rials bring-ing in	Rate Design-ated by Exe-cutive Engi-neer/ Assi-stant Direc-tor	Cate-gory Of Mate-rial	Mea-sure-ment	Dis-count rate for ad-vance pay-ment	Total amount of ad-vance pay-ment paid up to date	No. and date of autho-rized letter for ad-vance pay-ment	Expla-nation for remain-ing ad-vance pay-ment over 3 months
1	2	3	4	5	6	7	8	9	10

Part – 3
Undertaking

- (1) Measurements filled in columns 4 to 9 of the Part-1 are measured by U....., Assistant Engineer, on the..... day of, 20.... and recorded in..... page of the measurement book.
- (2) In addition to the actually completed works described in column 7 of the Part-1, the price of other actually completed works is not less than, after detailed measurement will be made, the advance payment issued for the convenience of contractor mentioned in column 3 of the Part-1 in which the respective proportion amount is deducted from the advance payment; and such detailed measurement will be carried out immediately.
- (3)
 - (a) The quantity of the additional materials shown in column 3 of the Part-2 is the actual number of materials brought to the site and they are not included in the previous advance payment.
 - (b) Such materials are essential for the work according to the agreement on price for the completion of work and they are durable.
 - (c) Executive Engineer or Assistant Director registers the agreement signed by contractor in the Form 31 under the paragraph 300 of the Code of Accounts for Public Works.

Signature of Engineer who prepares invoice

(Signature of Contractor)

(Signature of authorized person to pay)

‘Part – 4’

Record of Payment

<p>(1) Total price of work of actual measured Part-1, column 8(a)</p> <p>(2) Total advance payment up to date for completed work but not being measured Part-1, column 3(b)</p> <p>(3) Total price of materials brought to the site up to date Part-2, column 8(c)</p> <p>(4) Total (No. 1 + 2 + 3)</p> <p>(5) minus the suspended amount (a) under the final invoice for payment in installment (b) under the current invoice</p> <p>(6) The remaining amount to be paid up to date No. (4-5)</p> <p>(7) The last payment on the date under the invoice for payment in Installment</p> <p>(8) Adjusted amount shown below for the amount to be paid by contractor (a) price of materials paid to work for the adjustment of the account (aa) (b) the amount received in other account title for the adjustment Contractor’s performance guarantee (c) the amount of cheque</p>		
---	--	--

Kyat by cheque (Kyat) is allowed to be paid.

Signature of drawing officer

Kyat(Kyat) is received.

Date

Witness

Signature of Contractor

I myself have paid by cheque No. on the date

Date of Cheque/ cashier

Signature

Form 27

Invoice for Payment in Installment

1. Receipt No. of Accounts book and Date
2. Name of Contractor
3. Title of work
4. No. and Date of current invoice
5. No. and Date of the previous invoice
6. No. and Date of Contract

‘Part -1’

Completed Work or Procurement

Mea- sure- ment	Completed work or quantity of materials procured under measurement book	Title of work or materials supplied	Rate	Total cost		Remark
				Amount up to date	Amount of the previous invoice	
1	2	3	4			7

‘Part -2’
Undertaking

I undertake that measurements are measured by U....., Engineer (), on the..... day of, 20.... and recorded in No....., page of the measurement book. Advance payment is not made in the past without having detailed measuring.

Signature of who prepares invoice

(Signature of Contractor)

(Signature of authorized person to pay)

“Part – 3”

Record of Payment

<p>(1) Price of work completed or Price of materials procured (column 5(a))</p> <p>(2) Minus the suspended amount</p> <p style="padding-left: 20px;">(a) under the final invoice for payment in installment</p> <p style="padding-left: 20px;">(b) under the current invoice</p> <p>(3)) The remaining amount to be paid up to date</p> <p>(4) The last payment on the date under the invoice for payment in installment</p> <p>(5) Adjusted amount shown below for the amount to be paid by contractor</p> <p style="padding-left: 20px;">(a) amount received will be shown as amount received to this work</p> <p style="padding-left: 40px;">(aa)</p> <p style="padding-left: 20px;">(b) the amount received by deduction will be shown as amount received in other account title for the adjustment</p> <p style="padding-left: 40px;">(bb)</p> <p style="padding-left: 20px;">(c) the amount to be paid by cheque</p>		
---	--	--

Kyat by cheque (Kyat) is allowed to be paid.

Signature of drawing offier

Kyat(Kyat) is received.

Signature of applicant

I myself have paid in cahs/by cheque on the date of

Cashier

Signature.....

Title.....

Form 27-A

- 1. Receipt No. of Accounts book and Date
- 2. Name of Contractor
- 3. Title of work
- 4. No. and Date of current invoice
- 5. No. and Date of the previous invoice
- 6. No. and Date of Contract

Completed Work or Procurement

Abstract of work and the titles of works included	Price of work	Remark

Signature of an officer who prepares invoice

(Signature of Contractor)

(Signature of an officer who authorized to pay)

Form 28
Form of Payment in general

No. of receipt in the Accounts book

Date

(1) Kyat (Kyat only) by cheque / in cash is allowed to be paid to
U/Daw.....

(Signature of authorized person)

(2) Done by myself.

(Signature of who has paid)

Kyat.....(Kyatonly) is received from the Executive Engineer.

Subject of payment

.....
.....

Date.....

(Receiver)

Receipt

(See paragraph 283-290 and 306, Chapter 10)

Boucher No. of the Accounts book

Date

Kyat.....(Kyat.....) is paid (1) by cheque

(2) Done by myself.

Kyat..... (in words.....) is received from

For which work or subject is paid

No. of measurement book

No. of contract.....

Date

Witness.....

Endorsed that invoice is correct.

Assistant Engineer/Staff Officer

(.....)

Agreement for Advance Payment

1. This agreement is made on..... between Contractor (including its authorized administrators and members) and Ministry (including its successors and member). Advance payment shall be applied by Contractor to Ministry as Contractor has agreed in accordance with the agreement dated on..... ;and materials are actually owned by Contractor; and works at construction site are executed completely under the price stipulated in the contract. Ministry also agrees to furnish the amount Kyat..... requested by Contractor. Contractor shall apply by describing in details relating to the safety, quality and other stipulations of the materials in Invoice Form (B) of the Part-2. Minister shall exempt for the safety of materials delivered to the site by Contractor.

2. Contractor shall announce the following with the consent of Ministry after accomplishing Contractor's receipt for payment by Ministry upon the performance of Contractor and the provisions of this Agreement and other advance payment;

- (1) The amount of advance payment Kyat..... by Ministry to Contractor and total of such amount or other advance payment shall be used for the works under the above contract to be completed speedily but not for other matters.
- (2) The materials stated in details in the Request for payment (b) are Contractor's own materials and they are freed of any debt. Such list of materials is submitted to and kept at the Ministry. Contractor shall not apply for advance payment relation to the materials which are not owned by the Contractor and freed of debt. If Contractor applies for advance payment of such materials, Contractor shall liable for compensation to the Ministry.
- (3) An application for the detailed materials stated in Request for payment (B) and other materials shall be together with an instruction of Executive Engineer or Assistant Director Region or State that work is executed according to the contracts.
- (4) Contractor shall arrange at his own cost for the safety of materials. He shall be responsible to keep the remaining materials in his control after using at work. Such materials shall be shown at any time when Executive Engineer or Assistant Director or an officer authorized by Chief Engineer or Director visits and examines them. Executive Engineer or Assistant Director shall supervise for the replacement of materials by Contractor with the similar ones in the event such materials are stolen or destroyed or damaged.
- (5) Such materials shall not be removed without the consent of Executive Engineer or Assistant Director or an officer authorized by Chief Engineer or Director.

- (6) When the following events are occurred, Contractor shall return all of the advance payment under the contract to the Ministry –
- Compensation is made for the event that the price of materials stated in Contractor's request is less than the value of the materials actually used in the work; the quality of materials does not meet that of materials stated in advance payment.
- (7) If Contractor makes a mistake in the Agreement or relating to the materials for which advance payment is made, Contractor shall compensate to the Ministry and shall pay 8.5% interest per year from the date when advance payment is made to the time of compensation.
- (8) Contractor shall pay to the Ministry the compensated amount Kyat..... and other advance payment, damages and expenses without any commiseration under the Agreement and statement. Some of all of the following shall not be returned with the consent of the Ministry –
- (a) Contractor used all or any of the above materials under the contract for the completion of work by making debit amount for the advance payment received for actual cost or for the obligations carried out under the contract. If Contractor's report is not conformity with the leftovers, Contractor shall compensate to the Ministry.
 - (b) Damaged materials shall be tendered and compensation shall be paid from such sales amount to the Ministry and the extra amount will be given to the Contractor.
 - (c) Deduction shall be made from the deposit made by the Contractor under the contract or any or all of other money.
- (9) No interest is required for advance payment for the compensation mentioned above.
- (10) When the differences are occurred between materials actually delivered and materials under contract, such disputes or differences shall be decided by Chief Engineer or Director in accordance with the existing laws. This Agreement is signed between and Ministry of with the instruction and on behalf of the Ministry before the following witness on the date as written above.

Witness (1)

Witness (2)

Detailed Procurement Plan (FY2014)

Contract Package	Contract	Material			Other cost (ex. Transportation) (Kyat)	Total cost (Kyat/Contract)	Procurement Method	Offices in charge of procurement
		Quantity	Unit Price (Estimated) (Kyat/Unit)	Total (Kyat)				
1	Diesel (Jun) (gal)	44,800	3500	156,800,000	5,600,000	162,400,000	Direct contracting (with MPPE)	Procurement Division / ID Head office
2	Diesel (Jul) (gal)	63,000	3500	220,500,000	7,875,000	228,375,000		
3	Diesel (Aug) (gal)	63,000	3500	220,500,000	7,875,000	228,375,000		
4	Diesel (Sep) (gal)	64,600	3500	226,100,000	8,075,000	234,175,000		
5	Diesel (Oct) (gal)	66,200	3500	231,700,000	8,275,000	239,975,000		
6	Diesel (Nov) (gal)	62,800	3500	219,800,000	7,850,000	227,650,000		
7	Diesel (Dec) (gal)	62,800	3500	219,800,000	7,850,000	227,650,000		
8	Diesel (Jan) (gal)	48,500	3500	169,750,000	6,062,500	175,812,500		
9	Diesel (Feb) (gal)	49,350	3500	172,725,000	6,168,750	178,893,750		
10	Diesel (Mar) (gal)	45,550	3500	159,425,000	5,693,750	165,118,750		
11	Reinforced Bars (ton)	220	121,254	26,675,955	447,000	27,122,955	Local Competitive Bidding (LCB)	Con (2)
12	Cement (ton)	13,428	170,817	2,293,729,555	29,000	2,293,758,555	Local Competitive Bidding (LCB)	
13 ~	Local materials (Sand, Gravel, Timber, etc.)	Detail estimation has been done by Executing agency				4,777,472,036	Local Competitive Bidding (LCB) / Shopping by Quotation	
	Labor (Man·Day)	216,000	5,000	1,080,000,000		1,080,000,000	Direct Payment	Con (2)
	Total					10,084,378,547		

Attachment 6: Request for Review of Contract

Annex VI

Date:
Ref. No.

To: JAPAN INTERNATIONAL COOPERATION AGENCY
Southeast Asia and Pacific Department
Attention: Director General

Ladies and Gentlemen:

REQUEST FOR REVIEW OF CONTRACT

Reference: Loan Agreement No. MY-P7, dated March XX, 2014, for
Irrigation Development Project in Western Bago Region

In accordance with the relevant provisions of the Loan Agreement under reference, we hereby submit for your review a certified copy of the Contract attached hereto. The details of the Contract are as follows:

1. Number and Date of Contract: _____
2. Name and Nationality of the Supplier: _____
3. Address of the Supplier: _____
4. Name of the Purchaser: _____
5. Contract Amount: _____
6. Eligible Expenditure: _____
7. Amount of Financing Applied for: _____
(representing ___ % of eligible expenditure)
8. Description and Origin of the Goods: _____
9. (In case the Supplier is a joint venture) Name, Nationality and
Address of each company of the Joint Venture:
(A company): _____
(B company): _____

We should be grateful if you would notify us of your confirmation to the Contract by sending us a Notice regarding Contract.

Very truly yours,

For: _____
(Name of the Borrower)

By: _____
(Authorized Signature)

Attachment 7: Notice of Contract

Annex VII

Date:
Ref. No.

To: JAPAN INTERNATIONAL COOPERATION AGENCY
Southeast Asia and Pacific Department
Attention: Director General

Ladies and Gentlemen:

NOTICE OF CONTRACT

Reference: Loan Agreement No. MY-P7, dated March XX, 2014, for
Irrigation Development Project in Western Bago Region

In accordance with the relevant provisions of the Loan Agreement under reference, we inform you that the Contract has been duly confirmed by us to be in conformity with the Loan Agreement. The details of the Contract are as follows:

1. Number and Date of Contract: _____
2. Name and Nationality of the Supplier: _____
3. Address of the Supplier: _____
4. Name of the Purchaser: _____
5. Contract Price: (excluding TAX) _____
(including TAX) _____
6. Eligible Expenditure: _____
7. Amount of Financing Applied for: _____
(representing ___ % of eligible expenditure)
8. Description and Origin of the Goods: _____
9. (In case the Supplier is a joint venture) Name, Nationality and
Address of each company of the Joint Venture:
(A company): _____
(B company): _____

Very truly yours,

For: _____
(Name of the Executing Agency)

By: _____
(Authorized Signature)

Attachment 8: Suggested Contract Form for Procurement of Materials

Annex (F)

Tender for procurement and Terms and Conditions for Contract

I/We submit this tender to procure the materials described according to the category of work for the Ministry of(hereinafter referred to as the “Ministry”) within the period stipulated in Table 1 of the Memorandum, in accordance with the standards mentioned in clause 10 (a) of the terms and conditions and in the attachment hereto when Executive Engineer or Assistant Director instructs to procure the materials with the support of materials to be issued under Table 2 by the Department and to perform for other matters in conformity with the terms and conditions of the contract.

Whenon behalf of the Department accepts the tender, I/we agree to abide the provisions mentioned in the tables above and the terms and conditions of the contract. If fails, the amount of money described in the terms and conditions of the contract shall be confiscated as compensation for the Department.

Total in Kyat

(a) In cash

(b) Challan No..... of Branch No..... of Myanmar Economic Bank shall be attached and paid as an earnest money. The deposit shall be reimbursed if tender is not selected.

If I/we fails to commence the said work within a month upon the date when tender is accepted, the Contract is deemed terminated and all deposit which we paid shall be confiscated without harming other rights.

I/We acknowledge that a deposit amount Kyat as performance guarantee, in a similar way as the deposit is made, shall be paid within 5 days after receiving the notice for the acceptance of tender; and the work shall not be commenced until such performance guarantee is furnished.

This Contract is signed before the following witness in on thedate of.....

Witness

Tenderer

Name.....

Name.....

National Identity Card No.....

National Identity Card No.....

Occupation

Occupation

Address

Address

.....

.....

The tender above is accepted on behalf of Public Works Department.

.....

.....

.....

.....

Date:

Memorandum

- (a) Total price of tender stipulated in Table 1 hereunder - Kyat
- (b) Amount of earnest money - Kyat
- (c) The maximum total amount of performance guarantee - Kyat
- (d) Period for completion of work from the date issued of Work Order to commence the work (see clause 2(a) and 6(a) of the Terms and Conditions) -month
- (e) Date of approval letter to commence work (clause 2(a) of the Terms and Conditions) -
- (f) Agreed date for the completion of work (according to clause 2(a) and 7 of the Terms and Conditions) -

Total amount of performance guarantee means earnest money + deposit + additional deposit.
(see clause 1(a) of the Terms and Conditions)

Table 1 of the Memorandum

Materials to be procured, place for procurement and price to be paid

Place for procurement		Category of Materials and place for delivery	Quantity for procurement	Price submitted by tender		Unit to be paid	Tender price for each item	
From	To			In Words	In Numbers			

Executive Engineer

Total tender price (in words) Kyat

Contractor

/ Assistant Director

(in numbers) Kyat

Table 2 of the Memorandum

Materials issued by the Department and their prices at the column described below

No.	Category of material	Measurement unit (in words)	Price to be deducted per unit	
			(in words)	(in numbers)

Executive Engineer /

the place to issue materials to the contractor.....

Assistant Director

Contractor

Contract for Procurement

Terms and Conditions of Contract and Standards (attached)

The terms in this Terms and Conditions shall have the same meaning described as below:

“Executive Engineer or Assistant Director”	means Executive Engineer or Assistant Director who is responsible for the working group, project engineer who is in the same rank and deputy (or) associate project directors and their successors.
“Region or State Chief Engineer or Director”	means the above Executive Engineer or Director and an officer who is in the same rank and responsible for Region or State engineer, project engineer and project directors who are in the same rank.
“Contractor”	means a person who is selected for his tender submitted for this work.
“Work”	means temporary or permanent; or original or altered or amended or substituted or supplemented works to be performed under this Contract except construction works which are not reasonable in terms of subject or matters.
“Table”	means any table which is attached to this Contract.
“Memorandum”	means any memorandum which is attached to this Contract.
“Term and Condition”	means any term and condition described hereunder.

<p>2.(c) If contractor dies before the completion of work, an authority who accepts the work on behalf of the Department may, at his own discretion;</p>	<p>To perform after a contractor dies</p>
<p>(1) allow a legal representative of such contractor to continue the work in accordance with the original terms and conditions.</p>	
<p>(2) may proceed under clause 4 of the Terms and Conditions after the Contract must be terminated. The confiscation of performance guarantee may be exempted upon the termination made under this Term and Condition.</p>	
<p>(3) If contractor suspends the work except the matter occurred under clause (a) of the Terms and Conditions; or Executive Engineer or Assistant Director believes that contractor neglects or fails to use the best effort or that fails to follow the Terms and Conditions, Executive Engineer or Assistant Director may notify to the contractor by giving notice to follow the Terms and Conditions for contractor strictly and use the reasonable efforts in works. Notice shall evidently include the failure and weakness of contractor. Such notice shall be implied to be served in accordance with this provision.</p>	<p>Notice for suspension or failure</p>
<p>4.(a) If contractor continues the failure until 14 days after notice is given under clause 3 of the Terms and Conditions or the failure described in the notice, an authority who accepts the work on behalf of the Department -</p>	<p>Termination of contract</p>
<p>(1) may give notice to the contractor for the termination of contract. Then Executive Engineer or Assistant Director may confiscate total amount of performance guarantee of the contractor as described in clause 1(a) and 2-b of the Terms and Conditions and such confiscated amount shall be the account of the Department; (2) shall measure the completed works at the date of termination; (3) such measured work shall be paid with the price stipulated in Table 1.</p>	
<p>4.(b) If contractor is in the action under clause 4(a) or contract is terminated under 2(b) or 2(c), contractor shall not claim for his damage by the reason that materials for works are bought or arranged to buy or offered to buy.</p>	<p>No compensation for termination or dissolution</p>

4.(c) If the machines and materials are not removed within a month after giving notice, Executive Engineer or Assistant Director on behalf of the Department may sell the machines and materials by tender basis. Such process of selling shall be at the risk of contractor and the remaining amount after deducting the expenses approved by the Executive Engineer or Assistant Director shall be considered as contractor's earnings. The machines and materials which are not sold at the tender shall be managed by the Department at its discretion and no compensation shall be claimed for such arrangement.

Taking measures for contractor's machines and materials

5. Any failure to exercise the authority assigned to the Department under any Terms and Conditions shall not be deemed a waiver of such provision. The Department shall have a right to use authority if there is a contractor's failure. Such exercising of authority shall not exclude any compensation to be paid for the past and future by the contractor.

No waiver Contractor's responsibility for compensation

6.(a) If Executive Engineer or Assistant Director deems that the procurement of materials is delayed due to any event of Force Majeure or hazardous weather or a notice for temporary suspension of work which is given by Executive Engineer or Assistant Director or any other reasonable reason, an authority who accept this tender on behalf of the Department may extend the period of completion with the reasonable period without requiring compensation. When such extension is not consented in writing, no excuse is allowed for any event under clause 2(a) because of the failure to complete within the designated time stated in clause (e) of the Memorandum and a circumstance that the work will not be complete in time. The decision of an authority who accept this tender shall be final for contractor and all person concerned in relation to the cause of delay for work and extension of period.

Extension for delay

6.(b) If the work is delayed due to other reasons rather than any cause mentioned in clause 6(a), Executive Engineer or Assistant Director shall extend the period as he thinks fit and contractor shall be liable to pay compensation for such extension. The amount of compensation for the first extension shall be Kyat....., and for second and further extension shall be Kyat on each.

Extension of period due to other causes

6.(c) If contractor wishes the period for work to be extended in

Contractor's

accordance with clause 6(a) and 6(b), he shall submit in writing for extension describing the required period to the Executive Engineer or Assistant Director within 15 days from the first date when the delay happens. Even though such extension is submitted, contractor shall use his best efforts not to occur the delay during the whole period of work to meet the satisfaction of Executive Director and Assistant Director.

application for extension

7.(a) Contractor shall notify the schedule of procurement in writing to the Executive Engineer or Assistant Director.

Notice for the schedule of procurement

7.(b) Executive Engineer or Assistant Director shall issue the certificate of the completion of procurement upon the date when procurement of materials is completed in accordance with the standards stated in clause 1(a).

Certification of completion of work

8.(a) Contractor may receive the payment with installment for the any work procured which are in conformity with the standards. Such payment with installment shall be based on the measuring. Such payment shall be in line with the total amount of final payment entitled to contractor for all works. Such payment with installment shall not be deemed the final acceptance of work and shall not prevent from removing any ramshackle work and unqualified work. In addition, such payment shall not adversely affect any performance of the Department under the Contract, any claim of money, any rights, final payment, tallying the records and the Contract.

Payment with installment for procurement

8.(b) Although the performance of final measuring will be notified in writing within a reasonable time, the measuring done by Executive Engineer or Assistant Director or his authorized person shall be final for contractor and all person concerned if contractor or his representative fails to attend.

Final measuring and payment

9.(a) Contractor shall submit purchase order in advance to the Executive Engineer or Assistant Director for materials which will be issued by Department under Table 2. Contractor shall have no right for any claim and compensation in the event of delay in the performance of work due to the reason of the failure of submitting the purchase order. Contractor shall be responsible to meet the requirements under the

Request for purchase order for materials to be issued by Department

Dynamite Act in relation to the dynamite and the Department shall not liable for any matter relating to the contractor's negligence and failure.

9.(b) Contractor shall use any material issued by Department for only the works under this Contract. The materials issued by Department shall be solely deemed as the materials of Department and kept until the Contract is completed or terminated. Therefore, such materials from the site for any reason or from the place where the other materials are available shall not be removed. Contractor shall allow the inspection of Executive Engineer or Assistant Director at any time. The contractor shall not act as a normal receiver of such materials and therefore shall keep them safely without any damage in any situation.

Department owns materials until the completion of work

9.(c) When the Department requires the materials which is issued by the Department and of in good conditions and unused and the Executive Engineer or Assistant Director requests for the contractor to return them in writing, the contractor shall return the materials so requested to the place which are mentioned in the notice. If there is no request in writing, materials are not be required to return. The contractor shall have no right to claim for compensation for the loss of materials which are issued by the Department mentioned above and unused.

Return the materials issued by Department for any reason

10.(a) All procurement shall be in conformity with the descriptions in Table 1 and the sample if the contractor submitted the sample together with the tender. In addition, such procurement shall be in accordance with the standards of the Department except the standards in the specific attachment due to the standards which are contrary to and unreasonable with those of the Department. Otherwise, the Department shall not be responsible to receive or pay for such materials except the acceptance in favour under clause 10(a).

Standards for procurement

10. (b) If the Executive Engineer or Assistant Director considers that the materials procured are not fully in conformity with the standards mentioned above, the Executive Engineer or Assistant Director may designate the reasonable and proportionate price from the prices listed in Table 1 for such materials. The contractor shall reply in writing within 10 days after receiving the notice of the offer price made by Executive Engineer or Assistant Director.

Rejected materials

If the contractor fails to reply, Executive Engineer or Assistant Director have a right to inform the contractor to remove such rejected materials within a reasonable time from the place for procurement shown in Table 1. When the contractor fails to remove such materials Executive Engineer or Assistant Director on behalf of the Department shall carry out in accordance with the clause 4(d). Contractor shall be responsible for compensation under clause 2(b) as the work may not be considered to be completed in time due to the shortage of materials after rejection.

11. Contractor shall not transfer or sub-contract the work under the Contract without the written consent of Executive Engineer or Assistant Director. If contractor transfers or sub-contract the work mentioned above without the consent of Executive Engineer or Assistant Director, or he becomes bankrupt or in a petition of bankruptcy or makes an agreement for the benefits of his creditors, an authority who has accepted this tender shall make an action on behalf of the Department under clause 4(a) without giving notice under clause 3.

Action against
transfer, sub-contract

12. Contractor shall be liable for any damage to the strength of buildings and decoration; and people, animals and property due to his performance or his employees to pay compensation for his employees under Workmen's Compensation Act and its amendments and rules but not the Ministry's responsible. If the contractor fails to comply with the above responsibilities, Executive Engineer or Assistant Director has authority to deduct the cost approved by himself from the contractor.

Damages of building,
person, etc.

13. Contractor shall arrange at his own cost tools, machines, equipments, workers and materials in order to execute the work systematically and properly except the matters mentioned in Table 2.

To provide machines
and tools by
contractor

14.(a) The works shall be always supervised by the contractor himself or his competent representative. The instructions of Executive Engineer or Assistant Director to such representative shall be deemed as those to the contractor.

14.(b) When Executive Engineer or Assistant Director requests the

Power of dismiss

contractor in writing, contractor shall dismiss immediately his unqualified workers and those who act unreasonably among his foremen, workers or other employees relating to the performance of the work and shall not employ them again without any written consent of Executive Engineer or Assistant Director.

the contractor's employees

15.(a) The agreed prices stated in Tables shall include all costs to implement under these provisions of the clauses herein. The Department shall not be responsible for such matters.

Prices include all costs to implement under the terms and conditions.

15.(b) If contractor fails to comply any of the terms and conditions, he shall be liable to pay Kyat 500,000 for each failure even notice is given under clause 3 according to the decision of Executive Engineer or Assistant Director except the action is not taken under clause 4(a). The compensation paid under the terms and conditions shall be deemed to be the damage of the Department even though the actual damage is happened or not.

Compensation for failure under the terms and conditions

16. Contractor shall employ at least 25% of Myanmar employees except it is approved that Myanmar employees are not available for the minimum percentage designated by Executive Engineer or Assistant Director.

Employ Myanmar employees

17. Everyone who is under the age of 18 shall not be employed at the work.

No employment of under-aged.

18. Contractor shall not pay the wages which are lower than that of other similar jobs in domestic to the workers employed in his work. If any dispute arises relating to the local wages, the decision of Region or State Chief Engineer or Director shall be final and binding upon the contractor and all person concerned. Contractor shall pay wages in cash. In a special condition, wages shall be paid in kind partially after receiving the written consent from Executive Engineer or Assistant Director.

19. If a notice or other correspondence requires to be served to the contractor relating to a term and condition, such notice is evidently deemed to be served when it is registered at and delivered by post to the address which is stated in the Contract at the time of signing

Notice to contractor

thereof by contractor or the latest address which is informed by contractor in writing or the latest address registered at post office which is in the knowledge of.

20. If contractor does not agree with the issuing of approval by Executive Engineer or Assistant Director under these clauses, he may freely appeal such issuing to the Region or State Chief Engineer or Director in writing within 15 days after receiving such issuing. The decision of Region or State Chief Engineer or Director relating to such matters, the definition of standards for the quality of the materials shall be final and binding on all person concerned in the Contract.

The decision of Region or State Chief Engineer of Director shall be final.

21. When the contractor is of a partnership company limited and any change is made in its composition, such change shall be notified to the Executive Engineer or Assistant Director in writing. If the shares of partnership are dissolved or company limited is winded up, it shall be taken in action under clause 2(c).

Change of construction company

22. When the contractor has fulfilled the whole work to meet the satisfaction of Executive Engineer or Assistant Director and the payment is made, the remaining of the total amount of performance guarantee shall be reimbursed to the contractor after deducting the amount to be paid under this Contract or these terms and conditions.

Reimburse the total amount of performance guarantee.

23. Contractor shall abide the existing laws of the Republic of the Union of Myanmar. The headings describing beside the terms and conditions shall not affect the validity.

Miscellaneous

Attachment 9: Advance Procedure Brochure

Dec.3.2012

JAPAN INTERNATIONAL
COOPERATION AGENCY

Brochure on
Advance Procedure
for Japanese ODA Loans

December 2012

Brochure on Advance Procedure
for Japanese ODA Loans
December 2012

Section 1. Introduction

- 1.01. Unless otherwise defined in this brochure, the capitalized words not defined herein have the same meanings as defined in the relevant Loan Agreement and/or the General Terms and Conditions to which this brochure applies.
- 1.02. If any provision of this brochure is inconsistent with any provision of the Loan Agreement, of which this brochure constitutes an integral part, such provision of the Loan Agreement shall govern.
- 1.03. Headings of Sections herein are inserted for convenient reference only, are not part of this brochure and do not affect the construction of, or be taken into consideration in interpreting this brochure.

Section 2. Procedure

- 2.01. This brochure provides for advance disbursements substantiated by a financial forecast made by the Borrower on a periodic basis.
- 2.02. The Borrower shall prepare a financial forecast that reflects the fund requirements, in principle, for the subsequent two (2) terms (such forecast hereinafter referred to as the “**Financial Forecast**”), with sufficient details to enable JICA to verify the reliability of the forecast and submit the same to JICA promptly after the end of each term. A term wherever mentioned in this brochure shall be for a quarter, an interval of three (3) months, starting from the date separately agreed between the Borrower and JICA.
- 2.03. The Borrower shall open and maintain a non-resident yen account (hereinafter referred to as the “**Loan Account**”) in accordance with the

relevant laws and regulations of Japan in advance with a bank in Tokyo (hereinafter referred to as the “**Paying Bank**”), as stipulated in the Loan Agreement, and a designated account, from which payments for eligible expenditures are made (such account hereinafter referred to as the “**Designated Account**”), with a bank, as stipulated in the Loan Agreement.

- 2.04. The Designated Account shall be stated and maintained in Japanese Yen. Amount requested to JICA shall also be expressed in Japanese Yen, and the total disbursement for the Designated Account shall be in the amount not exceeding the amount allocated to the Category for the Designated Account, stipulated in the Loan Agreement.
- 2.05. The Borrower may submit one (1) request for advance disbursement each term (other than the case stipulated in Section 4.04 below). When JICA finds that the Request for Disbursement and the related documents are in order and in conformity with the relevant provisions of the Loan Agreement, JICA shall make disbursement in Japanese Yen, in principle, within fifteen (15) business days from the date of receipt of the request by paying into the Loan Account. Thereafter, the Borrower shall transfer the amount disbursed from the Loan Account to the Designated Account.
- 2.06. All amounts withdrawn from the Designated Account shall be used solely for payments made or to be made in accordance with the purpose and scope of works stipulated in the relevant provisions of the Loan Agreement. The Borrower shall record all transactions independently in accordance with consistently maintained sound accounting principles. The Borrower shall submit relevant documents, including, but not limited to, the documents mentioned hereinafter to justify the expenditures paid out from the Designated Account.

Section 3. Initial Advance Disbursement

- 3.01. The Borrower shall submit the following documents to make request for the initial advance disbursement:
- (a) Request for Disbursement as per attached Form RFD(A);
 - (b) Financial Forecast, in principle, for the first two (2) terms; and
 - (c) document evidencing the opening of the Designated Account

Section 4. Subsequent Request for Disbursement and Recovery Percentage

- 4.01. The Borrower shall submit to JICA the following documents to make request for subsequent advance disbursements:
- (a) Request for Disbursement as per attached Form RFD(A);
 - (b) Financial Forecast, in principle, for the subsequent two (2) terms;
 - (c) Reconciliation Statement made substantially as per attached Form RS;
 - (d) Statement of Expenditures, as supporting documents, made substantially as per Form SOE (A); and
 - (e) document evidencing the balance of the Designated Account
- 4.02. Subsequent request for advance disbursement should be based on the Financial Forecast, in principle, for the subsequent two (2) terms, provided that the advance disbursement made in the past under the Loan Agreement have been utilized adequately. The amount stated on the Request for Disbursement shall match the amount calculated and described in the Reconciliation Statement.
- 4.03. For each request, Reconciliation Statement shall show the recovery percentage calculated based on the cumulative total justified through supporting documents, over the cumulative total withdrawn from the Designated Account. If the recovery percentage is less than seventy percent (70%), the Borrower shall not be allowed to submit the Request for Disbursement until it exceeds such percentage, unless JICA determines otherwise.

- 4.04. Notwithstanding Section 2.05. above, if the Borrower has unexpected fund requirements for further advance disbursement for the Project before the end of the term, the Borrower is allowed to make additional requests in the course of the term, upon submission of the required documents stated in Section 4.01. above, to rationalize such requirements. In such case, the Borrower shall submit a revised Financial Forecast that reflects such unexpected fund requirements, for the unexpired time period of the two (2) terms covered in the originally submitted Financial Forecast. Furthermore, if one (1) year or less is left until the end of the project completion or expiry of the Disbursement Period, whichever is expected to come earlier, the Borrower may change the interval for submitting the Request for Disbursement by adjusting the term for the Financial Forecast by consultation with JICA. In any event, however, meeting the recovery percentage shall be a prerequisite in submission of a Request for Disbursement as provided in Section 4.03. above.
- 4.05. The Borrower may, not only at the time of requesting disbursements as stipulated in Section 4.01 above, but also, at any time during the Disbursement Period or up to four (4) months after the Disbursement Period expires as provided under Section 10.01 below, submit to JICA the documents listed in Section 4.01., excluding (b), to update the justified amount of expenditures and recovery percentage.

Section 5. Payments Made in Currency Other than Japanese Yen

- 5.01. When the currency used or to be used for the payment is not Japanese Yen, the amount paid or to be paid shall be converted to Japanese Yen and the Borrower shall withdraw such Japanese Yen equivalent to the amount paid or to be paid in the original currency, from the Designated Account. The exchange rate shall be the one quoted by a foreign exchange bank authorized as such by the authority in the territories of the Borrower as of the date of withdrawal. The amount paid or to be paid in the original currency, the exchange rate at the time of withdrawal from the Designated Account, and the equivalent

amount paid in Japanese Yen shall be described in the Statement of Expenditures and submitted together with the evidence of the exchange rate.

Section 6. Request for Advances to be Disbursed in Installments

- 6.01. Upon request by the Borrower, the advances may be disbursed in installments, provided that the request meets the following conditions:
- (a) the Request for Disbursement is submitted to JICA at least fifteen (15) business days prior to the first requested disbursement date;
 - (b) the Requested Schedule for Advance Payments substantially as per attached Form RSAD is submitted in addition to the requirements stipulated in Section 3.01. or 4.01 as the case may be;
 - (c) requested disbursement dates are all banking business days in Japan, are all within the immediately succeeding term and are acceptable to JICA; and
 - (d) the frequency of the requested disbursement in installment within the term, in the opinion of JICA, is reasonable.
- 6.02. Once the Request for Disbursement is approved by JICA, the request shall become irrevocable and the Borrower shall not be allowed to change the disbursement dates.

Section 7. Method of Statement of Expenditure and Auditing Requirements

- 7.01. The Statement of Expenditure required in Section 4.01. shall be deemed as a supporting document for payment and shall exempt the obligation of the Borrower to submit specific supporting documents such as invoices and receipts to JICA, on condition that the Borrower shall:
- (a) promptly at the beginning of project implementation, furnish JICA, with a copy of engagement letter signed by an authorized person of an auditor acceptable to JICA, in which the said auditor agreed to audit the records and accounts related to the applicable expenditures financed out of the proceeds of the Loan in the

Designated Account and submit to the Borrower a certified copy of the report of such audit;

- (b) maintain, or cause to be maintained, records and accounts adequate to reflect, in accordance with consistently maintained sound accounting practices, the expenditures financed out of the proceeds of the Loan;
- (c) have the records and accounts related to the applicable expenditures financed out of the proceeds of the Loan in the Designated Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by the said auditor;
- (d) furnish JICA as soon as available, but in any case not later than nine (9) months after the end of each fiscal year, with a certified copy of the report of such audit by the said auditor, of such scope and in such detail as JICA may reasonably request;
- (e) furnish JICA with such other information concerning said records and accounts, and the audit thereof, as JICA may from time to time reasonably request;
- (f) retain, until at least five (5) years after the Completion Date, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (g) enable JICA's representatives to examine such records; and
- (h) ensure that such records and accounts are included in the annual audits referred to in paragraph (c) above and that the report of such audit contains a separate opinion by the said auditor as to whether the statements of expenditures submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related disbursement.

Section 8. Refund

- 8.01. If JICA has determined at any time that any of the following occurs, the Borrower shall, promptly upon notice from JICA, deposit into the Designated Account or, if JICA so requests, refund to JICA such ineligible or unjustifiable amount in Japanese Yen:

- (a) any payment made for an expenditure not eligible under the Loan Agreement, including, but not limited to, an ineligible expenditure described in a certified copy of a report of such audit referred to in Section 7.01.;
- (b) any payment not justified by supporting documents. (Such unjustifiable amount shall be determined to be the balance between the cumulative disbursement for the Designated Account and the cumulative amount of satisfactory supporting documents in Japanese Yen received by JICA); or
- (c) any amount deposited into the Designated Account that will not be required to cover further payments under the Loan Agreement.

8.02. When the ineligible or unjustifiable amount in Japanese Yen is refunded to JICA, the Borrower shall refund such amount together with the interest accrued thereon. Notwithstanding the above, if such refund is made before the Disbursement Period expires, the interest accrued thereon shall be paid to JICA on the Payment Date immediately following the date the refund is made.

Section 9. Suspension

- 9.01. When the Borrower, in the opinion of JICA, fails to perform its obligations stated in any of the paragraphs of Section 7. or Section 8. above, JICA may, by notice to the Borrower, suspend in whole or in part the rights of the Borrower under the Loan Agreement until JICA determines that such failure has been fully remedied.
- 9.02. Moreover, even if the situation is remedied, if JICA determines that the Borrower will not be able to perform its obligations at a satisfactory level to JICA, JICA may, by notice to the Borrower, suspend the use of the Statement of Expenditure and instead require the submission of all supporting documents such as invoices and receipts along with a Summary Sheet of Payments in a form designated by JICA, or suspend the use of Advance Procedures entirely.

- 9.03. However, the above actions do not impair JICA's further exercise of the rights stated in Section 6.01 of the General Terms and Conditions.

Section 10. Closing of the Designated Account

- 10.01. Upon request by the Borrower, and when JICA finds it necessary, withdrawals from the Designated Account may be allowed after the Disbursement Period expires, to make payments for services or supplies incurred on or before such period expires. Notwithstanding the above, the Borrower shall submit to JICA all supporting documents justifying the utilization of advance disbursement within four (4) months after the Disbursement Period has expired, unless otherwise agreed by JICA.
- 10.02. The Designated Account shall not be closed prior to JICA's confirmation that all necessary procedures including submission of the final audit report and refund, if necessary, have been completed.

Section 11. Banking Arrangement

- 11.01. The Borrower shall designate a foreign exchange bank in the territories of the Borrower (hereinafter referred to as the "**Agent Bank**"), as stipulated in the Loan Agreement, as its agent for the purposes of taking any action or entering into any arrangement or agreement, on behalf of the Borrower, required or permitted under this procedure. Any action taken or arrangement or agreement entered into by the Agent Bank pursuant to the authority conferred on the Agent Bank shall be fully binding on the Borrower and shall have the same force and effect as if such action was taken or such arrangement or agreement was entered into by the Borrower. The Borrower may revoke or modify the authority conferred on the Agent Bank if consent of JICA is obtained.
- 11.02. The Borrower shall cause the Agent Bank to make necessary arrangement with the Paying Bank, including, but not limited to, the

following for this brochure:

- (a) to open a Loan Account on behalf of the Borrower with the Paying Bank; and
- (b) to confirm necessary arrangements for transaction of funds to the Designated Account after the proceeds of the Loan is credited to the Loan Account.

Section 12. Foreign Exchange Risk

- 12.01. The Borrower shall bear all risks associated with foreign exchange fluctuations arising from disbursement and JICA shall not be liable therefor.

Request for Disbursement

to D/A Name : [Account no. or name]

<input type="checkbox"/>	Request for Disbursement
<input type="checkbox"/>	Request for Disbursement (in installments)
<input type="checkbox"/>	Request for reporting justified expenditures only

Date:

Application Serial No.:

To: JAPAN INTERNATIONAL COOPERATION AGENCY
 Attn: [Name of the Department or JICA Office in charge]

Ladies and Gentlemen:

Pursuant to the Loan Agreement No. dated , between the JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as "JICA") and (the Borrower) (hereinafter referred to as the "Loan Agreement"), the undersigned hereby requests for Advance Disbursement, under the said Loan Agreement, of ¥ in number (Say Japanese Yen in wording) by being paid to the Loan Account of (Agent Bank of the Borrower) with (Paying Bank), Tokyo, Japan, from which (Agent Bank of the Borrower) transfers the amount to the Designated Account.

1. The undersigned has prepared the accompanying documents (including the Financial Forecast, if applicable) in good faith. The undersigned has not obtained nor will obtain funds for such purpose out of the proceeds of any other loan, credit or grant available to the undersigned except short-term loans or credits, if any, established in anticipation of the disbursement requested for herein and to be repaid pro-tanto with the funds disbursed hereunder and any charges, commission or interest paid or payable under such anticipatory short-term credits are not included in the amount herein requested to be disbursed.
2. Required documents as per the Loan Agreement attached to this request shall form an integral part hereof.

Very truly yours,

 (Name of the Borrower)

 (Authorized Person's Signature, Name & Title)

REQUESTED SCHEDULE FOR ADVANCE PAYMENTS in INSTALLMENTS

Instruction: Please complete this form and attach it to the related Request for Disbursement (RFD) form, when applicable. When attached, this will be deemed to be an integral part of the RFD.

1. Loan No.

2. Application Serial No. of related Request for Disbursement

3. Requested payment schedule

Ref. (a)	Requested Value Date for Disbursement (b)	Amount to be Paid in JPY (c)	
I.		JPY	
II.		JPY	
III.		JPY	
TOTAL		JPY	-

NOTE: i) The requested dates should be in accordance with section 6.01 of the Brochure.

ii) JICA will make its best effort to make the payments on the requested dates, but if difficult, JICA will shift the date to the nearest date appropriate for disbursement by JICA.

iii) Once JICA approves the request, the request will become irrevocable and the dates and amount may not be changed.

RECONCILIATION STATEMENT

LOAN NO.: _____ APPLICATION NO.: _____
 NAME: (Borrower or E/A) _____
 REPORTING PERIOD: From _____ To _____
 CATEGORY: _____
 DESIGNATED ACCOUNT: Bank Name _____ Account NO. _____
 DATE: _____

		(in Japanese Yen)	
Detail	Current Period	Cumulative	
Beginning cash balance			
1. D/A balance as of			
ADD: Advances from JICA			
2. Advances credited to D/A			
3. Amount claimed but not yet credited as of the date of the bank statement			
4. Total cash available [1+2+3]			a
LESS: Advances withdrawn from D/A			
5. Total amount justified by supporting documents			b
6. Total amount withdrawn but not yet justified by supporting documents			c (d-b)
7. Total withdrawn [5+6]			d (b-b)
8. Cash available less withdrawn [4-7]			
Closing cash balance			
9. D/A balance as of			e
Difference (8-9) should be zero	0	OK!	
Recovery Percentage (Total justified amount / Total amount withdrawn from D/A)	The percentage stipulates on the JICA	70%	#DIV/0! b/d #DIV/0!

		(in Japanese Yen)	
Detail	Next Period		
Forecast of amount needed for next 2 periods			
10. Total Fund requirement			
11. Amount requested to be advanced [10-9]			f
(Reference)			
Unjustified Amount when request for advance above is approved			a-f-b

Authorized Signature(s), name, and title of representative of the E/A which hold the title of the designated account

- NOTES:
 1. Copy of bank statement for the period should be attached
 2. _____ is automatically calculated.

REMARKS:

STATEMENT OF EXPENDITURE

Advance Procedure

PROJECT _____ D/A NO. _____ DATE _____
 LOAN NO. _____ CATEGORY _____ APP. NO. _____

No.	JICA CONC. NO./CONTRACT No.	NAME OF SUPPLIER	NATIONALITY	Month/Date of Payment	Description	Amount Paid (without Tax)	Disbursement %	Amount for JICA Financing in Contract Currency	Exchange Date *	Exchange Rate	Amount for JICA Financing in Request Currency (JPY)
JICA CONCURRENCE NO.											
1											
2											
3											
SUBTOTAL (JICA CONC. NO.)						-		-		JPY	-
JICA CONCURRENCE NO.											
1											
2											
3											
SUBTOTAL (JICA CONC. NO.)						-		-		JPY	-
CONTRACTS NOT REQUIRING CONCURRENCE											
1											
2											
3											
SUBTOTAL (CONTRACTS NOT REQUIRING CONCURRENCE)						-		-		JPY	-

The undersigned certifies that the Supplier(s) and payments stated above are procured according to the applicable guidelines and eligible under the Loan Agreement.

TOTAL AMOUNT in JPY _____

For (Name of the Borrower)

* Exchange Date: the date of withdrawal from D/A

Authorized Person's Signature,
Name & Title

At-1-9-14