

Mandatory Reference: 305
 File Name: 305mab_013003_cd30
 Revision: 01/30/2003
 Effective: 11/13/2002

Country Contracting Handbook

Chapter 2: Procurement of Construction Services

DISCLAIMER

Many of the mandatory and supplementary references to the chapters in the ADS 300 Series contain references to the Handbooks which no longer exist. If the policies remain, they are in an ADS 300 chapter. Information which has not been included in an ADS 300 chapter is guidance only. The references will be revised to refer to ADS chapters or other guidance as applicable.

Formerly Chapter 2, Handbook 11

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1.0 Introduction

1.1 Applicability

Chapter 2 of the Country Contracting Handbook contains both rules and guidance for country contracting for construction services under bilateral assistance (both loan and grant funded), as discussed below.

a. Contracts Competed Internationally

This Chapter 2 of the Country Contracting Handbook applies to contracts for construction services when solicitations for such contracts are not made solely within the cooperating country, even though local firms may be eligible, regardless of whether the contract is denominated in U.S. dollars, local currency, or other currency.

b. Contracts Competed Locally

When solicitations for contracts for construction services are made solely within the cooperating country, only the contract approval requirements set forth in Section 2.2, the nationality and source requirements in Section 2.5, the mandatory contract clauses in Section 2.11, and the competitive principle in Section 2.3.1a must be followed. In addition, this Chapter contains information and procedures which are useful in entering into such contracts.*

c. Procurement by Intermediate Credit Institutions

The Country Contracting Handbook applies to contracts entered into by development banks or other intermediate credit institutions for their own account. Although the guidance may contain useful information, the rules do not apply to contracts entered into by or on behalf of the subborrowers of such banks or institutions unless made applicable by the Strategic Objective Grant Agreement (SOAG) or SOAG Implementation Letter.

*See also ADS Chapter 311, for contracting policies concerning Local Procurement; Chapter 316, for Intermediate Credit Institutions; and Chapter 317, for Fixed Amount Reimbursement.

d. Other Chapters in this Handbook are:

- Chapter 1, Procurement of Professional and Technical Services
- Chapter 3, Procurement of Equipment and Materials
- Chapter 4, Cost Principles for Country Contracts

1.2 USAID's Role in Country Contracting

The USAID Mission is responsible for providing assistance to the Contracting Agency, to the extent necessary, in the application of the rules and guidance in carrying out its responsibility for stewardship of U.S. Government funds. In certain cases, as discussed in Section 2, these rules may be waived by an authorized USAID official based on a written justification.

1.3 Rules

The rules to be followed in country contracting are set forth in Section 2.0 of this chapter. They are either derived from U.S. Government statutes or are based on USAID's experience in carrying out its responsibility for stewardship of U.S. Government funds. In certain cases, as discussed in Section 2, these rules may be waived by an authorized USAID official based on a written justification.

1.4 Guidance

The remainder of this chapter contains guidance which may be modified based on the circumstances of the particular contract. This guidance is based on sound contracting practice. Use of procedures other than those recommended in the Guidance Section of this Chapter (Section 3) does not require waivers of any kind. The procedures to be followed in contractor selection and contract preparation should be agreed upon with the Contracting Agency and set forth in a SOAG Implementation Letter. Review of the application of the procedures by the Contracting Agency to individual contracting actions is part of the USAID contract approval process.

1.5 Definitions

(See Glossary)

USAID GEOGRAPHIC CODE
BORROWER/GRANTEE
CONTRACTING AGENCY
ELIGIBLE COUNTRIES
FIRM
JOINT VENTURE
LEGAL RESIDENT
LOCAL, COOPERATING COUNTRY, OR HOST COUNTRY
PROCUREMENT EXECUTIVE
STRATEGIC OBJECTIVE AGREEMENT
STRATEGIC OBJECTIVE GRANT AGREEMENT(SOAG)
STRATEGIC OBJECTIVE TEAM
UNITED STATES

Special terms are usually defined when first used. Any reference to a firm or contractor also applies to a sole proprietorship.

2.0 Rules

2.1 Use of Country Contracting

It is usually appropriate that the Borrower/Grantee, acting through a designated Contracting Agency (rather than USAID), contract for construction services required to implement projects financed under bilateral agreements. A supervisory architect/engineer contractor ("Engineer") usually provides the necessary assistance to the Contracting Agency in awarding and administering construction contracts. Such assistance may include final design work, developing specifications, preparing the Invitations for Bids, evaluating bids, overseeing the work under the contract, and the like.

2.2 USAID Approvals

2.2.1 When the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, written USAID approval is required for:

- A. Notices to prospective bidders, e.g. Commerce Business Daily notices;
- B. Lists of prequalified bidders, if any, prior to issuance of the solicitation document;
- C. Complete solicitation document, prior to issuance;
- D. The contractor selection method (See Section 2.3.);
- E. The selected contractor;
- F. Decision to reject all bids;
- G. The contract, prior to execution;
- H. Signed contract documents, before financing; and
- I. Contract administrative actions such as subcontracts, amendments, and change orders, as determined by the Mission and stipulated in a SOAG Implementation Letter.

2.2.2 USAID approvals may also be required, at the Mission's discretion, for contracts with a lower value and/or for other actions taken by the Contracting Agency during the contracting process. Such additional approval requirements will be set forth in a SOAG Implementation Letter.

2.2.3 In addition to the above USAID approvals, the USAID Procurement Executive's prior approval is required for contract awards and contract modifications in excess of \$10 million and for extensions of one year or more in the terms of contracts in excess of \$10 million.

2.3 Contracting Method-Competition

2.3.1 Rule

- a. The Foreign Assistance Act of 1961, as amended (Section 611(c)), requires, "To the maximum extent practicable, all contracts for construction . . . shall be made on a competitive basis."

b. Contracts for construction services are awarded on the basis of formal competitive bids. Formal competitive bid procedures normally include public advertising for prequalification, issuance of invitations for bids (IFB), public opening of sealed bids, and evaluation of bids. The contract is awarded to the lowest responsive and responsible bidder. Although USAID may choose not to approve contracts which do not exceed \$250,000, they shall also be awarded on the basis of formal competitive bids.

2.3.2 Competitive Negotiation

If the Contracting Agency has failed, after diligent efforts, to secure a contract through formal competitive bid procedures, and further use of the formal competitive bid procedures clearly would not be productive, the competitive negotiation procedure may be used in contracting for construction services. Competitive negotiation permits conduct of negotiations with two or more offers to determine the most acceptable proposal in terms of price and other factors (e.g. quality, delivery time, construction methods, etc.). Section 3.9 discusses the considerations in establishing a procedure for competitive negotiation, which must be developed based on the particular circumstances of the procurement. The Mission Director must approve the use of competitive negotiation, including the procedure to be followed, before competitive negotiations are initiated.

2.3.3 Waiver -- Negotiation with a Single Source*

a. Circumstances

Competition in the procurement of construction services may be waived and a single source negotiated contract authorized in accordance with paragraph c. below only under one of the following criteria. Waivers must be supported by a written record of the reasons for negotiation with only the single source.

1. The Borrower/Grantee wishes to utilize the contractor for additional work outside the scope of the original contract and the contractor is still mobilized at the site or for some other reason the contractor is so closely related to the activity that utilization of that contractor would effect a substantial saving of time or money.
2. Only one bid has been received pursuant to an IFB and the bid is not fully responsive, but the Borrower/Grantee wishes to negotiate only with that bidder.

*When formal competitive procedures are used and only one responsive bid is received from a responsible bidder and the price is reasonable, award is made in accordance with the Invitation for Bids.

3. Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interests of the United States.

b. Amendments

Approval of an amendment on an existing contract which increases the scope of work (i.e., an "new procurement amendment") is also required. Negotiation with the single source to amend the contract must be justified under one of the criteria in a.1 through a.3 above, and approved by the USAID official who has the authority for the estimated amount of the amendment.

2.4 Advertising

2.4.1 Rule

A. Solicitation of Potential Contractors

In furtherance of the rule in Section 2.3 above, solicitation of potential contractors is effected through widely disseminated advertising. This is accomplished by publishing a notice of the availability of prequalification questionnaires or, if prequalification is not used, Invitations for Bids in the Commerce Business Daily of the U.S. Department of Commerce, using the format prescribed in Attachment 2B. If the estimated contract value is under \$500,000, publication in the Commerce Business Daily is not required but may be used. However, if the Commerce Business Daily is not used, the Contracting Agency must utilize advertising in appropriate local, regional, or international journals, newspapers etc., and otherwise in accordance with local practice. Such advertising may also be utilized in addition to publication in the Commerce Business Daily. If competitive negotiations or negotiation with a single source has been authorized pursuant to Sections 2.3.2 or 2.3.3, publication is not required.

B. Publicizing Subcontract Opportunities

The announcement of contract awards made under the authority herein may be advertised in the Commerce Business Daily if the Contracting Agency determines such advertising is in its interest and significant subcontracting opportunities exist.

2.4.2 Waivers

The requirement for solicitation of potential contractors in the Commerce Business Daily may be waived by USAID to avoid serious delay in activity implementation, provided that efforts shall in any event be made to secure bids from a reasonable number of potential contractors.

2.5 Nationality and Source

2.5.1 General

a. The SOAG, SOAG Implementation Letters, and other related documents specify the authorized geographic code for nationality of services contractors and source for any related commodities.

b. Advanced developing countries, eligible under Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services are not eligible to furnish USAID-financed construction and engineering services. There is no waiver of this provision. (22 U.S.C. 2354)

c. Any individual transaction for the procurement of commodities that does not exceed \$5,000 (not including transportation) is not subject to USAID Nationality and Source requirements other than as follows: in no event shall procurement be from a non-Code 935 source.

2.5.2 Nationality Rule

2.5.2.1 Suppliers of Services

a. Privately Owned Commercial Suppliers

An individual or a privately owned commercial firm is eligible for financing by USAID as a contractor or as a subcontractor providing services only if the criteria in subparagraphs (1), (2), or (3) below are met and, in the case of the categories described in (2) and (3), the certification requirements in subparagraph (4) are met.

(1) The supplier is an individual who is a citizen of and whose principal place of business is in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;

(2) The supplier is a privately owned commercial (i.e., for profit) corporation or partnership that is incorporated or legally organized under the laws of a country or area included in the authorized geographic code, has its principal place of business in a country or area included in the authorized geographic code, and meets the criteria set forth in either subparagraph (a) or (b) below:

(a) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code and non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(b) The corporation or partnership:

(i) has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals, and

(ii) has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the date described in the preceding paragraph, and

(iii) employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States, and

(iv) has the existing capability or can provide the necessary resources in the United States to perform the contract.

(3) The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or nonprofit organizations which are eligible under a(1) or a(2), above, or b. below.

(4) A duly authorized officer of a firm or non-profit organization shall certify that the participating firm or nonprofit organization meets either the requirements of subparagraphs a (2)(a) or a (2)(b), or b. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subparagraph (2)(a), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

b. Nonprofit Organizations

Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by USAID as contractors or subcontractors for services if they meet all of the criteria listed in subparagraphs (1), (2), and (3) below, and the certification requirement in a(4) above is met.*

Any such institution must:

* International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the Senior Assistant Administrator, Global Bureau, are considered to be of U.S. nationality.

(1) Be organized under the laws of a country or area included in the authorized geographic code; and

(2) Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

(3) Have its principal facilities and offices in a country or area included in the authorized geographic code.

c. Government-Owned Organizations

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by USAID as contractors or subcontractors, except if their eligibility has been established by a waiver in accordance with the provisions in Sections 2.5.2.4.a(2) and 2.5.2.4.e, below.

d. Joint Ventures

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with a., b., or c. above.

e. Construction Services from Local Firms

When the host country is an authorized source for services, and the estimated cost of the contract for construction services is \$5 million or less, a corporation or partnership which is determined by USAID to be an integral part of the local economy is eligible. However, such a determination is contingent on first ascertaining that no U.S. construction company with the required capability is currently operating in the host country or, if there is such a company, that it is not interested in bidding for the proposed contract. In the latter case, inquiries on a company's interest should be addressed to its headquarters.*

A corporation or partnership is an integral part of the local economy provided:

*If only one U.S. construction company is interested, negotiation with a single source must be authorized in accordance with Section 2.3.3 of this Chapter.

- (1) It has done business in the host country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals.
- (2) It has a demonstrated capability to undertake the proposed activity;
- (3) All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the host country;
- (4) Most of its operating equipment and physical plant are in the host country.

2.5.2.2 Supplier of Commodities

When the contractor procures commodities for the activity, the supplier* of commodities must fit one of the following categories to be eligible for USAID financing:

- a. An individual who is a citizen or, except as provided in Section 2.5.2.3 below, a legal resident of a country or area included in the authorized geographic code;
- b. A corporation or partnership organized under the laws of a country or area included in the authorized geographic code;

c. A controlled foreign corporation; i.e., any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock is owned by United States shareholders within the meaning of Section 957 et seq of the Internal Revenue Code, 26 U.S.C. 957; or

*Nationality rules do not apply to suppliers of incidental services related to the procurement of equipment; incidental services are defined as the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation, or use of such equipment.

d. A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which fit any of the foregoing categories.

2.5.2.3 Ineligible Suppliers of Commodities and Services

Citizens of any country or area, and firms and organizations located in or organized under the laws of any country or area, which is not included in Geographic Code 935 are ineligible for financing by USAID as suppliers of services or commodities, or as agents in connection with the supply of services or commodities, except that non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible regardless of their citizenship.

2.5.3 Nationality of Employees under Contracts and Subcontracts for Services

a. General

The rule set forth in Section 2.5.2.1 above does not apply to the employees of contractors or subcontractors. Such employees must, however, be citizens of countries included in Geographic Code 935 or, if they are not, have been lawfully admitted for permanent residence in the United States.

b. Key Personnel

(1) It is USAID's policy that when the contractor on an USAID-financed construction project is a U.S. firm, at least half of the supervisors and other specified key personnel working at the project site must be citizens or permanent legal residents of the United States. Exceptions may be authorized by the Mission Director in writing if special circumstances make compliance impractical.

(2) In order to accomplish this, Missions shall assure that solicitation documents (and subsequent contracts) for construction services for which U.S. firms will be solicited clearly specify what categories of positions are subject to the requirement for using U.S. citizens or permanent legal residents. If a Code 941 firm, other than a U.S. firm, wins the contract, there is no requirement for a U.S. or Code 941 presence on the project site.

2.5.4 Source Rule for Commodities

The supplier of commodities to the construction contractor must meet the nationality rule in Section 2.5.2.2 above. In addition, the commodities and equipment procured by the contractor or a subcontractor for incorporation into the project or use in performing the USAID-financed contract must have their "source" and "origin" in eligible countries, as these terms are defined below, to be eligible for USAID-financing. Any component from a Foreign Policy Restricted country makes the commodity or equipment ineligible for USAID financing. This rule may be waived in accordance with Section 2.5.9 below. Commodities and equipment owned by the contractor prior to bid opening may be used in contract performance and need not meet this source rule.

2.5.4.1 Definitions

a. Source

"Source" means the country from which a commodity is shipped to the cooperating country or the cooperating country itself if the commodity is located therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse.

b. Origin

The "origin" of commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when through manufacturing, processing, or substantial and major assembling of components a commercially recognized new commodity results that is substantially different in basic characteristics or in purpose or utility from its components.

c. Components

"Components" are the goods that go directly into the production of a produced commodity.

d. Long-Term Lease

"Long-term lease" is a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program within a one-year period totalling more than 180 days.

e. Motor Vehicles

"Motor vehicles" are self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles and utility vehicles. Excluded from this definition are industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks) and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above).

2.5.5 Special Source Rule for Motor Vehicles

Motor vehicles must be manufactured in the United States to be eligible for USAID financing. Also, any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States. (22 U.S.C. 2396) In addition to the above requirements, passenger cars, light trucks, vans, minivans and utility vehicles must be manufactured by either Chrysler, Ford or General Motors and bear their nameplates, brand names or logos, to be eligible for financing by USAID. The nameplate, brand name or logo requirements do not apply when vehicles are procured under a source waiver. Vehicles which have been assembled in the United States but then subjected to minor disassembly to reduce shipping costs are considered U.S.-manufactured vehicles. However, so-called "knocked-down" vehicles consisting of parts or subassemblies of vehicles shipped for final assembly elsewhere are not considered vehicles. Such parts or subassemblies are subject to the source rule in Section 2.5.4 above.

2.5.6 Eligibility of Commodity-Related Services

a. Ocean Transportation

(1) The eligibility of ocean transportation services is determined by the flag registry of the vessel. Ocean transportation costs must meet the following requirements to be eligible for USAID financing:

(a) When the authorized Geographic Code is 000, USAID will finance ocean transportation costs only on U.S. flag vessels.

(b) When the authorized Geographic Code for commodities is other than Code 000, USAID will finance ocean transportation on vessels under flag registry of the United States or any other country in Code 935.

(c) When commodities whose eligibility is restricted to Geographic Code 000 are purchased under loans or grants which would normally authorize Code 941 procurement of commodities, USAID will finance ocean transportation in accordance with paragraph (b), immediately above.

(d) When shipment is made under a through bill of lading issued by a U.S. flag carrier, AID will finance costs incurred on vessels under flag registry of any country in Code 935 if the costs are part of the total cost paid to the eligible flag carrier.

(e) In cases where the United States owns excess local currency, the contractor shall, to the maximum extent possible, use the excess local currency rather than U.S. dollars to finance freight on vessels under flag registry of the cooperating country.

(2) Waivers to expand the flag eligibility requirements may be authorized when:

(a) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners;

(b) Eligible vessels can provide liner service only by transshipment and vessels under flag registry of countries to be authorized by the waiver provide liner service without transshipment;

(c) Eligible vessels are not available and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase contract costs or significantly delay receipt of the cargo.

(d) Eligible vessels are found unsuitable for loading, carriage, or unloading methods required, or for the available port handling facilities;

(e) Eligible vessels do not provide liner service from the shipment's source to the destination country;

(f) Eligible vessels do not provide liner service from the port of loading stated in the contracts port of export delivery terms, provided the port is named in a manner consistent with normal trade practice, or

(g) Eligible vessels decline to accept an offered consignment.

b. Air Transportation

(1) The eligibility of air transportation is determined by the flag registry of the aircraft.

(2) Grant-Financed Contracts

A U.S. Government statute requires the use of U.S. flag air carriers for all USAID grant-financed international air travel and transportation (regardless of the source of the commodity) unless such service is not available. Criteria for determining availability and the certification required for use of a non-U.S. flag air carrier are set out in Clause 76 of Attachments 2S. When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used.

(3) Loan-Financed Contract

(a) There is no statutory requirement for use of U.S. flag air carriers under loan-financed transactions.

(b) When the authorized geographic code under a loan is 000, USAID's policy on financing air transportation is the same as under grant-financed transactions (paragraph (2) above).

(c) When the authorized geographic code under a loan is 941, USAID policy requires use of host country flag air carriers, U.S. flag air carriers, or other Code 941 flag air carriers for international air transportation to the extent they are available in accordance with the criteria in Clause 76 of Attachment 2S. If the contractor certifies that authorized carriers are unavailable, any Code 899 flag carrier may be used.

c. General Transportation

Notwithstanding subparagraphs 2.5.6.a and b. above, unless otherwise authorized, USAID will not finance either the cost of the commodity or any transportation costs if the commodity is shipped:

- (1) On a transportation medium owned, operated, or under the control of any country not included within Geographic Code 935;
- (2) On any vessel designated by USAID as ineligible to carry USAID-financed cargo; or
- (3) Under any ocean or air charter covering full or part cargo which has not received prior approval by the Office of Procurement (M/OP), USAID/W.

d. Marine Insurance

- (1) The eligibility of marine insurance is determined by the country in which it is "placed". Insurance is "placed" in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if a Geographic Code other than 000 is authorized, the cooperating country is also eligible.
- (2) If a recipient country discriminates by statute, decree, rule, or regulation with respect to USAID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any USAID-financed commodity shipped to that country shall be insured against marine risks and the insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in any State of the United States. The prima facie test of discrimination is that a cooperating country takes actions which hinder private importers in USAID transactions from making c.i.f. or c. and i. contracts with U.S. commodity suppliers or which hinder importers in instructing such suppliers to place marine insurance with companies authorized to do business in the United States.

2.5.7 Cargo Preference

a. Rule

- (1) This rule is distinct from the rule in Section 2.5.6 regarding eligibility of ocean transportation for USAID financing. The cargo preference rule applies to all ocean shipments of USAID-financed commodities under a SOAG whether or not USAID finances the freight costs.
- (2) The Contracting Agency shall insure that at least 50 percent of the gross tonnage of all equipment and materials financed by USAID which may be transported to the host country on ocean vessels for use on or incorporation in, the project shall be transported on privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates for U.S. flag commercial vessels. This requirement is computed separately for dry bulk carriers, dry cargo liners, and tankers, and it is computed separately for

shipments originating in the United States and outside the United States. Additionally, at least 50 percent of gross freight revenues generated by dry cargo liner services must be generated by U.S. flag commercial vessels.

b. Determination of Non-availability

The Office of Procurement (M/OP), USAID/W, may make determinations, when circumstances warrant, that U.S. flag commercial vessels are not available. Requests for determinations of non-availability may be initiated by the Contracting Agency or the contractor. A determination of non-availability relieves the Contracting Agency of the requirement to use U.S. flag vessels for the tonnage of commodities included in the determination.

2.5.8 Local Procurement

a. Local procurement is the use of appropriated USAID funds for the procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the cooperating country.

b. All local procurements must be covered by source/and nationality waivers, as set forth in Subsection 2.5.2.4, with the following exceptions:

(1) When a contract for construction services (or certain contract items) is funded by the Development Fund for Africa (DFA), Code 935 is the eligible source area and special rules apply, as specified in USAID ADS Chapter 310 and Memorandum from John F. Hicks, February 1, 1993, Subject: Update and Reissuance of Africa Bureau Instructions on Implementing Special Procurement Policy Rules Governing the Development Fund for Africa (DFA) (Attachment 2T).

(2) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed the local currency equivalent of \$100,000 (exclusive of transportation costs).

(3) Commodities of geographic code 935 origin if the value of the transaction does not exceed \$5,000 (exclusive of transportation costs).

(4) Professional services contracts estimated not to exceed \$250,000.

(5) Construction services contracts estimated not to exceed \$5,000,000.

(6) The following commodities and services which are available only locally:

(a) Utilities including fuel for heating and cooking, waste disposal, and trash collection;

(b) Communications -- telephone, telex, fax, postal and courier services;

(c) Rental costs for housing and office space;

(d) Petroleum, oils and lubricants for operating vehicles and equipment;

(e) Newspapers, periodicals and books published in the cooperating country;

(f) Other commodities and services (and related expenses) that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

2.5.9 Waivers

a. Criteria

A waiver to authorize a different geographic code or include additional suppliers must be based on one of the following criteria:

(1) Source and Origin of Commodities.

(a) Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (a) (2) or (3) of this section may only be authorized on a case-by-case basis.

(1) Commodities required for assistance are of a type that are not produced in and available for purchase in the United States, and for waivers to Code 899 or Code 935, also not in the cooperating country, or any country in Code 941.

(2) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.

(3) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(4) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(i) When the lowest available delivered price from the United States is reasonably estimated to be 50 percent or more higher than the delivered price from a country or area included in Geographic Code 941 or the cooperating country.

(ii) When the estimated cost of U.S. construction materials (including transportation and handling charges) is at least 50 percent higher than the cost of locally produced materials.

(iii) Reserved.

(iv) Persuasive political considerations.

(v) Procurement in the cooperating country would best promote the objectives of the foreign assistance program.

(vi) Such other circumstances as are determined to be critical to the success of project objectives.

(b) Additional requirement for motor vehicles: The requirement that motor vehicles be manufactured in the United States may be waived when necessary to carry out the purposes of the Foreign Assistance Act. Among the circumstances which may merit waiving the requirements are: 1) inability of U.S. manufacturers to provide the necessary vehicles, e.g., light weight motorcycles, right-hand drive vehicles; 2) present or projected lack of adequate service facilities and supply of spare parts for U.S.-made vehicles; or 3) an emergency requirement for vehicles for which non-USAID funds are not available and which can be met in time only by purchase of non-U.S. manufactured vehicles.

(2) Suppliers of commodities.

Geographic code changes authorized by waiver with respect to the source of commodities automatically apply to the nationality of their suppliers. A waiver to effect a change in the geographic code only with respect to the nationality of the supplier of commodities, but not in the source of the commodities, may be sought if the situation requires it based on the appropriate criteria in 2.5.9.a.(1).

(3) Suppliers of services--privately owned commercial suppliers and nonprofit organizations. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (b) or (c) of this section may only be authorized on a case-by-case basis.

(a) Services required for assistance are of a type that are not available for purchase in the United States, and for waivers to Code 899 or Code 935, also not in the cooperating country, or any country in Code 941.

(b) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.

(c) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(d) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(1) There is an emergency requirement for which non-USAID funds are not available and the requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

(2) No suppliers from countries or areas included in the authorized geographic code are able to provide the required services.

(3) Persuasive political considerations.

(4) Procurement of locally available services would best promote the objectives of the foreign assistance program.

(5) Such other circumstances as are determined to be critical to the achievement of project objectives.

(4) Suppliers of services----foreign government-owned organizations.

(a) The competition for obtaining a contract will be limited to cooperating country firms/organizations meeting the criteria set forth in 2.5.2.1.a or b.

(b) The competition for obtaining a contract will be open to firms from countries or areas included in the authorized geographic code and eligible under the provisions of 2.5.2.1.a or b, and it has been demonstrated that no U.S. firm is interested in competing for the contract.

(c) Services are not available from any other source.

(d) Foreign policy interests of the United States outweigh any competitive disadvantage at which United States firms might be placed or any conflict of interest that might arise by permitting a foreign government-owned organization to compete for the contract.

(5) Delivery services.

(a) Ocean transportation.

Any waiver granted under this section for a particular shipment which is not based on a determination of non-availability does not reduce the pool of cargo from which the applicable percentage required to be shipped on U.S.-flag vessels under the Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b), is determined. A waiver to expand the flag registry of any Code 935 country may be authorized when:

(1) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners;

(2) Eligible vessels provide liner service, only by transshipment, for commodities that cannot be containerized, and vessels under flag registry of countries to be authorized by the waiver provide liner service without transshipment;

(3) Eligible vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase costs or significantly delay receipt of the cargo;

(4) Eligible vessels are found unsuitable for loading, carriage, or unloading methods required, or for the available port handling facilities;

(5) Eligible vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices; or

(6) Eligible vessels decline to accept an offered consignment.

(b) Air transportation

The preferences for use of United States flag air carriers or for use of United States, other Geographic Code 941 countries, or cooperating country flag air carriers are not subject to waiver. Other Code 935 air carriers may be used only as provided in 2.5.6.b.

2.6 Factors Other Than Nationality Affecting the Eligibility of Firms to Compete for the Contract

In addition to the eligibility criterion in Section 2.5 above, firms may be ineligible for USAID-financed contracts for any of the following reasons:

2.6.1 Dual Engineering and Supply/Performance Functions

Unless specifically approved by the USAID official authorized to approve the contract (for example, for turnkey jobs or in other exceptional circumstances) no firm, including its affiliates and subsidiaries, may perform both engineering services and provide commodities or perform construction services on the same project.

2.6.2 Unfair Competitive Advantage

A firm, including its affiliates and subsidiaries, should not be employed to perform services when, in the judgment of the USAID official authorized to approve the contract, the firm has been, or might be, placed in a position to achieve an unfair competitive advantage.

2.6.3 Debarment, Suspension, and Ineligibility

a. Rule

The Contracting Agency is required to refrain from awarding contracts to organizations and individuals that are suspended, debarred, or ineligible, as indicated on (1) the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" and/or (2) the "Consolidated Lists of Designated Nationals".

b. Waivers

(1) Exception with respect to parties listed on the "List of Parties Excluded from Federal Nonprocurement Programs" may only be made upon waiver by the USAID Procurement Executive.

(2) No waivers may be granted to the rule with respect to parties on the "Consolidated Lists of Designated Nationals".

2.6.4 Equal Employment Opportunity

Any firm incorporated or legally organized in the United States is eligible for an USAID-financed contract only if it certifies in its bid that it is in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator.

2.7 Language and Specifications

2.7.1 Documents submitted to USAID shall be in English unless USAID otherwise agrees in writing. Notices and solicitations to be published and/or disseminated in the United States shall be prepared in English in any event.

2.7.2 The metric system of measurement shall be used for specifications that are incorporated in or required by USAID-financed contracts unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

2.8 Prohibition Against/Restriction On Certain Types of Contracts

2.8.1 Prohibition

In no event will USAID finance a cost-plus-percentage-of-cost contract; i.e., a contract in which the profit or fee (however described) increases without limitation as the cost of the contract increases. Nor will USAID finance a contract for engineering services when the price is expressed as a percentage of the final cost of construction of a facility.

2.8.2 Restriction

The use of a cost-reimbursement contract for construction services, regardless of dollar value, requires specific USAID approval in writing. Cost-reimbursement contracts should incorporate the cost principles of Chapter 4 of this handbook and include an agreed budget which the contractor may not exceed without advance approval by the Contracting Agency. The budget sets forth the limitations on direct costs (e.g., salary, allowances, travel, commodities, etc.), indirect costs (e.g., overhead), and the fixed fee.

2.9 Documentation for Payment

Each USAID-financed contract must require that claims by contractors for payment of reimbursement for goods and services be supported by appropriate and complete

documentation, including the "Contractor's Certificate and Agreement with the Agency for International Development," form USAID 1440-3 (see Section 2.11.3), which is usually specified in the Project Implementation Letters, or other related documents.

The documents and related certifications may not include less information nor authentication than outlined in the Project Implementation letters, or related documents.

The documentation requirements under different methods of payment are discussed in Section 3.6.4.2.

2.10 Submission of Contracts to USAID

The Mission will inform the Contracting Agency how many copies of the final executed contract and amendments are to be submitted to USAID. The Regional Bureau shall advise the Mission of USAID/W distribution requirements.

2.11 Mandatory Contract Clauses

The mandatory contract clauses set forth in this section must be included in every USAID-financed construction contract under the conditions discussed below.

2.11.1 Legal Effect of USAID Approvals and Decisions

USAID requires the reservation of certain approval rights with respect to the contract but must not incur legal liability by reason of the exercise of those rights. Clause 73 in Attachment 2S which must be included verbatim in each contract, does not itself reserve approvals; it does recognize USAID's role as the financing entity and protects USAID against exposure to liability.

2.11.2 Nationality, Source, and Cargo Preference

The contract must state the eligible nationality of any subcontractors for services and nationality and source for procurement of commodities. The eligible countries must match those stated in the Project Agreement unless a waiver for specific services or goods has been obtained (see subparagraph 2.5.2.4). In addition, the contract must implement the cargo preference requirements contained in the SOAG. These requirements arise from a number of U.S. Government statutes and regulations. While the language contained in Clause 74 of Attachment 2S is not required to be used verbatim, any changes should be carefully worked out because this is a very complex subject.

2.11.3 Contractor's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract (Form USAID 1440-3)

The contract must require the contractor to submit a "Contractor's Invoice and Contract Abstract," (form USAID 1440-3), Attachment 2G, executed in accordance with instructions thereon, with each request for payment. (See Clause 60 of Attachment 2S.) This requirement may be waived only by USAID/W (the USAID Procurement Executive, with concurrence of GC).

2.11.4 Air Travel and Transportation

a. Grant-Financed Contracts

A U.S. Government statute (The International Air Transportation Fair Competitive Practices Act of 1974 (PL 93-623) requires the use of United States flag carries for all USAID grant- financed international travel and transportation by air, unless such service is not "available".

When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used. The language defining "available" and "unavailable" carriers in Clause 76 of Attachment 2S must be used verbatim in grant financed country contracts.

b. Loan-Financed Contracts

(1) There is no statutory requirement for use of U.S. flag air carriers under loan-financed contracts.

(2) When the authorized source under a loan is Code 000, USAID's policy of financing air transportation is the same as under grant-financed contracts (paragraph a. above).

(3) When the authorized source under a loan is Code 941, USAID policy requires use of cooperating country flag carriers, U.S. flag air carriers, or other Code 941 flag air carriers for international air travel and transportation to the extent they are available in accordance with the criteria in Clause 76 of Attachment 2S. If the contractor certifies that authorized carriers are unavailable, any Code 899 flag air carrier may be used.

2.11.5 Worker's Compensation Insurance

Worker's Compensation insurance must be provided under all services contracts financed by USAID, often in the form of Defense Base Act insurance. This clause is discussed in detail in subparagraph 4.7.2.2.e and sample language is contained in Clause 77 of Attachment 2S.

2.11.6 Marking

This clause implements a Foreign Assistance Act provision. USAID requires that job sites be identified to show that the project is financed by the United States Government. If compliance with marking requirements is impractical, USAID may waive the requirement. USAID may also waive the marking requirement, or authorize the removal of emblems, on a finding that the appearance of the emblems would produce adverse reactions in the host country. (See Clause 78 in Attachment 2S and ADS Chap 320).

2.11.7 Host Country Taxes

USAID funds may not be used to pay identifiable taxes to the host Government or its political subdivisions. Basic exemptions from such taxes is generally set forth in the bilateral agreement between the U.S. and host governments. The contract must contain a clause (see Clause 79 in Attachment 2S) applying the exemptions to the particular contract.

2.11.8 Settlement of Disputes

The contract must contain a clause which specifies impartial and effective procedures to resolve disputes that arise from the performance of the contract for which an amicable settlement can not be reached. The clause and the permissible modifications to it are discussed in 4.7.2.2.h.

2.11.9 Disposition of Personal Property in the Cooperating Country

The contractor's employees and their family members will not be permitted to retain profits from the disposition of personal property that was acquired in or was imported into the Cooperating Country and was exempted from import restrictions, customs duties, or taxes by virtue of the individual's status under an USAID-financed contract. The contract must contain a clause (see Section 4.7.2.2.i and Att. 2S, Clause 81) which restricts the disposition of such personal property in accordance with the rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government contractors in the Cooperating Country.

2.11.10 Equal Employment Opportunity

A contract with a U.S. firm must include a clause requiring the contractor to be in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator. (See Section 4.7.2.2.j and Att. 2S, Clause 82.)

2.11.11 Audit and Records

Contracts for construction services must contain an audit and recordkeeping clause. (See Section 4.7.2.2.k and Att. 2S, Clause 83.)

2.11.12 Corrupt Practices

All solicitations and contracts must contain a corrupt practices clause. (See Section 4.7.2.2.l and Att. 2S, Clause 84.)

2.12 Auditing and Contract Closeout Provisions

Provisions must be made for the proper audit of cost-reimbursable contracts and subcontracts in excess of \$250,000, including as necessary: setting aside project funds to cover the cost of the audit, selection of the auditing entity in accordance with the guidance in Section 3.11, and providing for the finalization of provisional overhead rates annually. Cost-reimbursable items in contracts and subcontracts that do not exceed \$250,000 and contract requirements such as source of goods and use of U.S.-flag air carriers shall be audited when there is basis for questioning contractor representations. (See Sections 3.11 and 4.7.2.2.k.) The contract shall also be closeout in an orderly fashion upon the contractor's satisfactory completion of the work. (See Section 3.12.)

3.0 Guidance

The guidance in this section 3 should be applied based on the circumstances of the procurement. Factors for consideration in country contracting for construction services include:

- Role of the Engineer
- Supervisory architect/engineer
- Turnkey ("single responsibility") contracts
- Preparation of the Contracting Agency's cost estimate and construction schedule
- Choice of type of contract
- USAID approvals
- Prequalification
- Purpose of prequalification
- Advertising
- Distribution of prequalification questionnaires
- Submission of prequalification information
- Analysis of prequalification information
- Preparation of the Invitation for Bids (IFB)
- Establishing the closing date
- Late bids
- Establishing requirements for bonds or guaranties
- Determining the method of payment
- Additional steps if prequalification was not used
- Special procedures for complex industrial plants
- Solicitation of bids
- Distribution of the IFB
- Prebid Conference
- Addenda to the IFB
- Contract Award
- Receipt of bids

- Late bids
- Qualification of bidders (if prequalification was not used)
- Bid opening and evaluation
- USAID approval of proposed award
- Signature of contract
- Required USAID approval
- Notification to bidders
- Competitive Negotiation
- Contract Administration
- Auditing the Contract
- Contract Closeout

These are discussed below:

3.1 Role of the Engineer

3.1.1 Supervisory architect/engineer

a. A supervisory architect/engineering firm ("Engineer") is usually employed to assist the Contracting Agency in contracting for and overseeing construction financed by USAID.* The Engineer is assigned certain responsibilities and authorities by the Contracting Agency. All such responsibilities and authorities are set forth in the Statement of Work in the Engineer's contract with the Contracting Agency.

*The contract with the Engineer (if USAID-financed) is awarded under Chapter 1 of this Handbook.

b. The responsibilities of the Engineer to the Contracting Agency may include such actions as the following:

- (1) Design of the facility to be constructed;
- (2) Preparation of the Contracting Agent's cost estimate and proposed construction schedule;
- (3) Preparation of the prequalification questionnaire and advertisement, and analysis of prequalification information;

- (4) Preparation of the Invitation for Bids, including the Technical Specifications and Drawings;
- (5) Assistance to the Contracting Agency in analyzing and evaluating bids;
- (6) Supervising the work of the construction contractor subject to such approvals by the Contracting Agency as may be required (see paragraph c. below);
- (7) Preparing progress reports to the Contracting Agency; and
- (8) Preparing "as built" drawings.

c. The extent to which the Engineer is delegated authority by the Contracting Agency to act on its behalf in supervising construction must be clearly stated in the IFB and contract for the construction services. Such authority is usually limited by monetary value (e.g. the Engineer may issue Change Orders for work involving additional costs or reduced costs up to specified individual and aggregate amounts while Change Orders involving greater costs must be approved by the Contracting Agency). These authorities and limitations must also be set forth in the Engineer's contract with the Contracting Agency. Both time and cost savings result from having an Engineer on site to detect and correct any deficiencies in the contractor's performance and to deal expeditiously, competently, and impartially with unexpected problems which require changes in the time schedule or variations in the work. The authorities for supervising the construction work may include such actions as the following:

- (1) General supervision of the construction work to ensure compliance with the Technical Specifications and drawings;
- (2) Assisting in coordination when more than one contractor is on site;
- (3) Conducting tests, as permitted or required, of materials and workmanship;
- (4) Measurement or verification of work quantities performed;
- (5) Issuing change orders or approving subcontracts up to certain value(s);
- (6) Approving drawings prepared by the contractor;
- (7) Issuing certifications for progress and final payments;
- (8) Assistance to the Contracting Agency in final inspection and acceptance of completed facilities, including the supervision of performance tests, initial operations, etc., and
- (9) Issuing the certificate of completion.

3.1.2 Turnkey ("Single Responsibility") Contracts

a. A contract under which the contractor is responsible for both design and construction of a facility is known as a "turnkey" (or "single responsibility") contract. Under such a contract the contractor is assigned practically all responsibility for implementation of a

project. This is an advantage if the Contracting Agency does not have the experience or staff to implement the project effectively. On the other hand, it has the significant disadvantage of being generally more expensive than contracting separately for design and construction.

b. However, subject to the rule in Section 2.6.1, a turnkey contract may be awarded in exceptional, but justifiable, circumstances. For example, processing plants (refineries, fertilizer or other chemical plants) of a proprietary nature vary in design among suppliers but their ratings or outputs are comparable. Turnkey contracts may also be used for highly specialized work where the design is so closely related to the construction work that is impractical to separate them. In the chemical industry, for example, many firms have the capacity to design and construct plants, while relatively few firms are primarily engaged in design. Competition may, therefore, be enhanced and coordination problems may be avoided by use of a turnkey contract.

c. Even if a turnkey contract is used, the employment of an Engineer by the Contracting Agency is generally highly desirable. The Engineer's functions in this situation would be limited; for example, assistance with contracting, supervision of purchasing and construction activities of the contractor, approval of drawings, certifications for payment, and generally ensuring that the contractor adheres to the requirements of the contract.

3.2 Preparation of the Contracting Agency's Construction Schedule and Cost Estimate

3.2.1 In order to evaluate the reasonableness of bids the Contracting Agency or the Engineer should prepare its own construction schedule and cost estimate in as much detail as possible. The construction schedule should be prepared first because the sequence in which elements of the work are scheduled, and the time needed to perform work elements, will affect the requirements for construction equipment and labor force as well as the overall construction period. A well designed construction schedule, as well as substantial knowledge of the major cost factors (cost of construction equipment, labor and materials at the construction site, contractor's overhead and profit expectations) are required for the preparation of a realistic cost estimate. If a significant amount of time elapses between preparation of the cost estimate and the bid opening date, or if some or all cost items are known to have changed significantly during that period, the cost estimate should be reviewed and updated as necessary before the bid opening date.

3.2.2 In order to avoid giving any bidder an unfair competitive advantage, the amount of funds available and the amount and composition of the cost estimate should not be disclosed to other than the Engineer or host country and USAID personnel with a need to know.

3.3 Choice of Type of Contract

3.3.1 General

The Contracting Agency decides which type of contract is most appropriate for specific procurement.

A fixed price contract is normally used. There are two types of fixed price contracts -- lump sum and unit price. These are discussed in detail below. Often a combination of the two types is used in a single contract.

In unusual cases, a cost reimbursement plus fixed fee contract may be used, or a portion of a predominantly fixed price contract may be on a cost reimbursement plus fixed fee basis.

In accordance with the rule in 2.8, a cost-plus-percentage-of-cost contract shall not be utilized.

3.3.2 Lump Sum (Fixed Price)

A lump sum contract is normally used for buildings, structures, or other facilities when the quantities involved can be accurately determined and variations are expected to be minimal. Payment under lump sum contracts may be in the form of one payment upon completion of the contract or in the form of progress payments based on completion of certain stages or a percentage of the total contract price at fixed times.

3.3.3 Unit Price (Fixed Price)

A unit price contract is normally used when quantities are variable, such as in earth moving. The contractor is paid for the actual quantities of work accomplished at a unit price established in the contract for the specific kind of work (e.g. cubic yards excavated, cubic yards of concrete placed, or feet of electrical cable installed, etc.). The unit prices included all cost elements (direct and indirect costs and profit). This type of contract is usually chosen for projects in which the types of work required can be precisely defined but the quantities are expected to vary from the designer's estimates, or if provisional items (i.e., items such as overhaul which may or may not be used) are included.

Under a unit price contract, the contractor is paid for the actual work whether greater or lesser than the amount estimated, within a stated range. By contrast, if a lump-sum contract were used, the contractor might include contingency amounts in its bid prices for higher than estimated quantities which would have to be paid regardless of actual quantities.

Lump-sum elements in predominantly unit price contracts may be appropriate when items cannot be measured or when the monetary value of certain items is too small to warrant the cost of measuring the actual quantities.

3.3.4 Cost Reimbursement Plus Fixed Fee (CPFF)

Cost reimbursement contracts may be used in exceptional cases, i.e., when the types of work and quantities cannot be defined with sufficient precision to enable a contractor to estimate with reasonable accuracy its costs of performing the contract. For example, major plant remodeling or equipment installation and plant start-up may be on a CPFF basis while building construction is on a fixed price basis. CPFF contracts are more difficult for the Contracting Agency or Engineer to administer, their actual cost is difficult to estimate with reasonable precision, and the Contracting Agency bears all risk of overruns, both with regard to unit costs and quantities. They are therefore generally less desirable than fixed price contracts.

3.4 USAID Approvals

3.4.1 Whenever the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, the rule in Section 2.2 requires USAID approval of specified intermediate steps in the contracting process, the final contract award, and postaward administrative actions as determined by the Mission. With respect to the latter, USAID and the Contracting Agency may agree on the thresholds and other criteria for determining the approval requirements for subcontracts, amendments, change orders, and other actions, depending upon their complexity, value, and other factors.

3.4.2 Whenever the total contract amount is not anticipated to exceed \$250,000 in value, the establishment of approval requirements is within the discretion of the Mission, and the Mission and the Contracting Agency may agree on which of them should be applied and establish thresholds for applying them. Different Contracting Agencies have widely varying experience with contracting matters, and with USAID country contracting rules and procedures in particular. The Mission must therefore assess whether the Contracting Agency is likely to select a contractor acceptable to USAID and to award a satisfactory contract without the Mission having prior approval of certain steps in the process. It must consider the complexity of the procurement and the likelihood of the Contracting Agency's being able to avoid mistakes in the procurement and to avert offeror protests. On the other hand, these factors must be balanced against the desirability of having the host country be responsible for its own contracting and the time savings possible if USAID reviews are kept to a minimum. The steps at which USAID approval will be required are set forth in a Project Implementation Letter.

3.5 Prequalification

3.5.1 Purpose of Prequalification

After the Contracting Agency has established what construction services are required and the type of contract (unit price, lump-sum, cost-reimbursement plus fixed-fee, or a combination of these) to be used, it will prequalify interested firms, unless a specific waiver is approved by the USAID Mission Director or USAID Principal Officer. The intent of this guidance is to ensure the selection of an "eligible" and "responsible" bidder, one who (i) meets the eligibility rules in Sections 2.5 and 2.6 and (ii) has the technical expertise, management capability, workload capacity, and financial resources to perform the work. These factors are evaluated during the prequalification process. Only bidders who prequalify will be permitted to submit bids for the contract.

As a minimum responsibility requirement, prequalification should require that the firm or joint venture or team of prime and subcontractors:

(i) has performed services similar in complexity, uniqueness of construction and value to the project services being bid and has achieved total business volume equal to or greater than the value of the project being bid in three of the five years prior to the issuance date of the Invitation for Bids or Request for Proposals, and

(ii) has the technical and financial resources to perform the contract.

3.5.2 Advertising

A notice of the availability of prequalification questionnaires is published and otherwise made known in accordance with the rule in 2.4.

The notice for the Commerce Business Daily should be prepared and submitted in accordance with Section 2.2. and Attachment 2B.

The notice for the Commerce Business Daily should contain the following information:

- a. A brief description of the project, the services involved and expected construction schedule;
- b. The name of the Contracting Agency;
- c. The address(es) at which interested firms may obtain prequalification questionnaires;
- d. The deadline for receipt of prequalification information (see Section 3.5.4) and a statement of how late prequalification information will be handled;
- e. A statement regarding the eligible nationality of the contractor and the source of any incidental goods;
- f. Approximate dates of availability of Invitations for Bids and opening of bids; and
- g. A statement that USAID will, or is expected to, finance the project.

See Attachment 2B for more detailed guidance in preparing Notices.

3.5.3 Distribution of Prequalification Questionnaires

The Contracting Agency furnishes to all interested firms responding to the prequalification notice, and to all other firms which it wishes to solicit, an outline for presenting their general and specialized qualifications, i.e., applicable experience, reputation, job capacity, etc. Attachment 2C, "Prequalification Questionnaire for Construction Contractors," is a sample form. Similar forms which will elicit comparable information may be used.

3.5.4 Submission of Prequalification Information

Prequalification information should be submitted to the Contracting Agency by the date specified in the notice. The deadline date should be a reasonable time after publication of the notice, but never less than 30 days after publication. Mailing time for prequalification forms and the completed questionnaires is a major factor in establishing the deadline date.

The Contracting Agency may consider prequalification information received after the due date as long as such consideration does not delay the contracting process. In order to avoid disputes, it is recommended that the notice contain a statement whether or not the Contracting Agency will, at its option, consider late prequalification information.

If a joint venture seeks prequalification, qualification information must be supplied with respect to all firms in the joint venture.

3.5.5 Analysis of Prequalification Information

The Contracting Agency evaluates the information submitted by interested firms responding to the prequalification questionnaire.

Each member firm of the joint venture must meet the nationality and other eligibility rules* in Sections 2.5 and 2.6. However, the joint venture is treated as a unit in determining technical and other qualifications. If subcontracting is contemplated by any firm or joint venture, qualification information may be requested with respect to major subcontractors.

* The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is maintained by the U.S. General Services Administration. The "Consolidated Lists of Designated Nationals" is published under the U.S. Treasury Department Foreign Assets, Sanctions, Transactions, and Funds Control Regulations in 31 CFR Parts 500-599. All of the lists will be regularly distributed to USAID Missions, and will be available for review. Additionally, GSA maintains electronic lists of the parties that may be accessed (Internet URL <http://www.arnet.gov/epl/>) and telephone inquiry about entries may be made to (202) 501-4873. Questions concerning the listing of organizations and individuals on the Treasury Department's "Consolidated Lists of Designated Nationals" may be directed to (202) 566-5021. Questions concerning the listing of organizations and individuals on these lists may also be directed to GC/LE in USAID/W.

In order to make an assessment of the experience claimed, the Contracting Agency should contact a sufficient number of the business references listed by each firm. The USAID Activity Manager will provide liaison to check the performance record that a firm may claim with USAID. When considering U.S. firms for which USAID and the Contracting Agency do not have sufficient first-hand information on previous performance or qualifications, the USAID Activity Manager may obtain additional business data for the Contracting Agency's consideration by cabling POL/CDIE/DI, in USAID/W. This office has access to approximately a dozen computerized business data bases, such as Dun and Bradstreet, Standard and Poor's, Moody's, etc.

The Contracting Agency should prepare a memorandum explaining the basis for the selection of the firms on the "shortlist," and provide a copy of the memorandum to the Mission. If required by Section 2.2, USAID approval of the "shortlist" must be granted before the IFB is issued.

The Contracting Agency will notify in writing all firms submitting prequalification information whether or not they are deemed qualified for the project. Notification shall be done in a timely manner. Qualified firms should be advised how to obtain the IFB. Attachments 2D and 2E are examples of such notification.

Firms that are not included on the "shortlist" are not considered further. However, the firms that are not included on the "shortlist" are not necessarily judged to be unqualified for want of inclusion.

3.5.6 Restriction on Disclosure of Information

To assure that the procurement is conducted in a manner that does not give an unfair competitive advantage to any party, information concerning specific procurement requirements should not be released to any potential bidders, directly or indirectly, prior to the issuance of

prequalification questionnaires or the Invitation for Bids if prequalification is not used. After issuance of the above, no bidder should be given any substantive information that would constitute a competitive advantage over other bidders that did not possess such information unless that information is promptly furnished to all the potential bidders in time for them to consider in preparing their bids. No information concerning the number, identity or qualifications of the bidders or potential bidders should be released prior to award, except as provided in the Contracting Agency's established procedures.

3.6 Preparation of the Invitation for Bids (IFB)

The contents of the Invitation for Bids are discussed in detail in Section 4.0. As required by the rule in Section 2.2, the IFB is approved by USAID prior to distribution.

3.6.1 Establishing the Closing Date

The closing date established in the IFB must allow bidders sufficient time to receive the IFB, prepare responsive bids (including time to visit the construction site, if appropriate), and submit their bids to the specified place by the specified time. The closing date may be extended by the Contracting Agency by means of an addendum to the IFB which is sent to all firms who received copies of the IFB.

3.6.2 Late Bids

A statement similar to the following regarding receipt and consideration of bids for award that are received after the exact time set for opening in the IFB should be placed in the IFB.

Bidders will be held responsible for ensuring that their bids are received in accordance with the instructions stated herein. A late bid will not be considered even though it became late as a result of circumstances beyond the bidder's control. A late bid will only be considered if the sole cause of it becoming a late bid was attributable to the Employer (i.e., Contracting Agency), its employees, or agents.

3.6.3 Establishing Requirements for Bonds or Guaranties

3.6.3.1 Definitions

- a. A bond is an instrument executed by surety which assures the owner (i.e., Contracting Agency) that in the event the principal (i.e., Contractor) fails to satisfy its obligations, the surety will either assume the obligations of the principal or assure payment of any losses sustained to the extent specified in the bond.
- b. A guaranty is an instrument (generally a letter of credit) issued by a banking institution at the request of a contractor which provides for payment up to a specified amount to a designated party upon presentation of prescribed documents indicating an unfulfilled obligation on the part of the contractor. A guaranty, unlike a bond, normally encumbers the assets of the contractor.
- c. Types of Bonds and Guaranties

(1) A bid bond or guaranty is a third-party commitment that accompanies a bid when invitations for bids so require. It assures that the bidder will not withdraw

its bid within the period specified for acceptance and will execute a written contract and furnish such additional bonds or guaranties as may be required in the invitation for bid within the periods specified.

(2) A performance bond or guaranty is a commitment by a surety or guarantor ensuring completion of contract requirements.

(3) A payment bond or guaranty is commitment which secures payment to all persons supplying labor and material for performance of the work under a contract.

3.6.3.2 General

Solicitations for contractual requirements to be financed by USAID provide for either bonds or guaranties at the option of the contractor unless surety bonding is not available or local law requires a guaranty.

USAID prefers the use of the surety bonds rather than bank guaranties as they are generally less costly to obtain and they place the responsibility for completion of contractual requirements on the surety. Surety bonds are issued by insurance companies specializing in the business of guarantying the performance of contract obligations. Sureties analyze the contractor's experience, workload and financial standing before issuing written assurances of contract performance; they are equipped to assist contractors having problems in contract performance, and ultimately they may take over the work to ensure completion. On the other hand, bank guaranties are extensions of credit available on demand which ensure that the Contracting Agency can collect a penal sum in the event of default. Bank guaranties are usually issued as letters of credit based primarily on financial strength. Surety bonds usually are considerably less expensive than bank guaranties and do not tie up a contractor's line of credit, thus allowing more contractors to compete. This results in reduced costs to the Contracting Agency by reducing the contractor's cost of performance and by increasing competition.

The IFB must indicate the required bid, performance and payment bonds or guaranties. Bonds or guaranties must be issued by acceptable surety companies, insurance companies or banks. Surety or insurance companies must meet criteria comparable to those established by the U.S. Treasury Department for acceptable sureties on Federal Bonds. Banks issuing bank guaranties must meet criteria comparable to those established by the U.S. Controller of the Currency for guaranties issued by U.S. national banks.

If after contract award, the contract price is increased for any reason by more than 10 percent, USAID may require that the amount of the performance and/or payment bond or guaranty be increased in an amount satisfactory to USAID.

3.6.3.3 Bonds

a. Bonds may be denominated in any convertible currency acceptable to the Contracting Agency and USAID. All bonds shall designate the Contracting Agency as beneficiary.

b. Bid bonds protect the Contracting Agency by ensuring that the contractor will execute a written contract and furnish such additional bonds or guaranties as may be required. Bid bond amounts may be expressed as a fixed amount or as a percentage of

the contractor's bid price. Generally the percentage or amount specified should be sufficient to protect the Contracting Agency from loss in the event the successful bidder fails to execute a contract or provide other bonds, i.e., it should cover the cost of going to the next highest bidder. USAID favors expressing the amount as a percentage of the contractor's bid price. The amount specified should generally be between 5% and 10% of the bid price or \$5,000,000, whichever is less. For more complicated projects where wide fluctuations in bid price are expected, higher percentages may be used. Bid bonds are not required in single source procurements authorized pursuant to section 2.3.3 or in competitive negotiation which will result in cost reimbursement plus fixed fee contract.

c. Performance bonds are issued by sureties to ensure completion of contract requirements. In the event a contractor defaults, the surety will remedy the default, take over performance itself, arrange for another contractor to complete the work, or pay the additional costs incurred by the Contracting Agency for completing the contract, up to the amount of the bond (the "principal sum"). The requirement for a performance bond in the Invitation for Bids is expressed as a percentage of the contract price. For contracts estimated to be under \$50 million, the amount of the performance bond should be 100 percent of the contract price. In cases where the estimated contract amount exceeds \$50 million, surety companies may have a technical problem in providing 100% performance bond. Since the companies providing overseas bonding are few and may experience difficulty with such high amounts (because the U.S. Treasury Department limits the amount that each company can underwrite and companies must group to distribute the large liabilities) at reduction of performance bond requirements should be considered for contracts exceeding \$50 million.

As a rule it is only when the amount of a bond is reduced from 100% to about 15% of the contract price that real savings in the costs for a performance bond are realized. A 15 percent bond seldom affords adequate protection since most default situations materialized before 85% of the work is completed.

d. Payment bonds are issued by a surety to secure payment to all persons supplying labor and material for the performance of work under a contract. Payment bonds are expressed as a percentage of contract price. The amount specified should be 50 percent of the contract price not to exceed \$2,500,000.

e. If the Contracting Agency is dealing with a single source in negotiated procurement or a limited number of large contractors and wants the automatic call on credit associated with bank guaranties, USAID may approve the use of "demand" and "guarantee" bonds on a case-by-case basis. These bonds, issued by U.S. sureties, are less costly than bank guaranties but are only available for large contractors with sufficient liquidity to immediately reimburse the surety in the event the bond is called. "Demand" or "guarantee" bonds might prove useful on large industrial projects where only the very large firms which could qualify financially for the bonds were deemed prequalified for the project. Demand bonds should not be used in other situations since they would limit competition to the small percentage of contractors who can meet the stringent surety requirements.

3.6.3.4 Guaranties

In instances where contractors elect to furnish guaranties in lieu of surety bonds or local law requires bank guaranties, the penal amount of the guaranties should be as follows:

- a. Bid Guaranty - 5% to 10% of the Contracting Agency's estimated contract price.
- b. Performance Guaranty - 8% to 15% of the contract price, depending on the complexity and size of the contract.
- c. Payment Guaranty - not used with performance guaranties.

3.6.4 Determining the Method of Payment

3.6.4.1 General

a. The method of payment to the contractor is described in the IFB and the contract and should be chosen in consultation with USAID personnel. The three basic methods employed for payment are Direct Reimbursement to the Borrower/Grantee, Direct Letter of Commitment to the Contractor, and Letter of Commitment to a U.S. bank with subsidiary Letters of Credit. Each is especially useful in certain situations explained below. In each method, payments are made on the basis of submission of the appropriate documents discussed in paragraph 3.6.4.2 below.

b. Direct Reimbursement to the Borrower/Grantee

Under the Direct Reimbursement procedure, the Borrower/Grantee pays for the contract services and related commodities from its own resources, prepares a request for reimbursement with the required supporting documentation, as listed in paragraph 3.6.4.2, submits it to USAID, and receives reimbursement.

c. Direct Letter of Commitment to the Contractor

The Direct Letter of Commitment (D L/COM) is an agreement between USAID and the contractor, under which USAID makes payment directly to the contractor for eligible commodities and services furnished under a country contract. The D L/COM is assignable, under the Assignment of Claims Act, by the contractor to a banking institution and thus may serve as collateral for credit the contractor may require for working capital.

The steps involved in this method of U.S. dollar payments are:

- (1) The Contracting Agency prepares a request for a Letter of Commitment and submits it to USAID.
- (2) Based on the Project Agreement and Project Implementation Letter, the request for a Letter of Commitment, and the contract, USAID issues a Letter of Commitment directly to the contractor.
- (3) The contractor presents the appropriate documents listed in paragraph 3.6.4.2 to USAID, and receives payment directly from USAID.

d. Letter of Commitment to U.S. Bank

The Bank Letter of Commitment (L/COM) is an agreement between USAID and a U.S. bank, under which the bank is authorized to make payments to the contractor for eligible commodities and services. The bank is reimbursed by USAID for payments made in accordance with the conditions set forth in the L/COM. This financing device utilizes established commercial banking channels to process payments to contractors. Under this financing arrangement, a party designated by the Borrower/Grantee (known as the "approved applicant" which is generally a host country bank) may either issue Letters of Credit to contractors and request the L/COM bank to advise or confirm them or may request the L/COM bank to issue its own Letters of Credit to contractors.

(1) Eligibility and Designation of U.S. Banks

Any banking institution organized under the laws of the United States, or any State, Territory or possession thereof, or Puerto Rico or the district of Columbia, is eligible to be designated as an L/COM bank. It is the responsibility of the Borrower/Grantee to select the U.S. banking institution, and as a general rule, responsibility for selection of the U.S. bank is delegated to the approved applicant. Normally, an existing correspondent relationship between the approved applicant and the U.S. bank is the basis on which a U.S. bank is selected.

In those cases where the amount of the contract is \$50,000 or more, the Contractor may, prior to signature of the contract, request the designation of a specific U.S. bank to receive the L/COM. The decision as to whether or not to comply with the contractor's request rests with the approved applicant which should make every effort to grant this request.

(2) U.S. Bank Charges

U.S. banking institutions charge for their services under Letters of Commitment issued to them by USAID. These charges are for the account of the approved applicant, but may be financed by USAID from funds set aside in the L/COM, if so authorized by the terms of the underlying agreement. The schedule of fees and charges should be negotiated, and agreed upon by the approved applicant and the U.S. bank prior to the time a bank is designated as the L/COM bank. If the Contracting Agency elects to finance the bank charges under the L/COM, which is usually the case, the amount to be set aside in the L/COM should be specified by the Contracting Agency and not be estimated by USAID. USAID will not finance any banking charges other than those assessed by the L/COM bank.

(3) The steps involved in this method of financing are:

- i. The Contracting Agency requests USAID to issue an L/COM. The request should contain the L/COM amount including the amount of estimated banking charges; the name and address of the U.S. bank; the name and address of the approved applicant; and the expiration date of the Letter of Commitment.
- ii. USAID issues a Letter of Commitment to the specified U.S. bank. The L/COM sets forth the conditions under which USAID will reimburse the bank.

iii. The L/COM bank, based on instructions received from the approved applicant, issues, advises, or confirms a Letter of Credit to the contractor. The Letter of Credit must be in accordance with the terms of the contract, including documentation requirements, and be consistent with the terms of the L/COM.

iv. The contractor presents the documentation prescribed in the Letter of Credit to the U.S. bank and receives payment.

v. The U.S. bank submits its voucher and the prescribed USAID documentation to USAID and receives reimbursement. The documentation submitted to USAID by the bank is not preaudited by USAID but, like all USAID-financed transactions, is subject to postaudit.

e. Mobilization Payments

(1) Mobilization payments are payments provided to a construction contractor to assist in meeting extraordinary start-up costs incurred to promptly perform under the contract (e.g., purchase of specialized equipment and shipment to the host country). Mobilization payments are normally included as a line item in the bid schedule. The Instructions to Bidders state the maximum amount to be entered, normally ten to twenty percent of the total bid price. The contractor is permitted to receive these mobilization payments, after expenditures are incurred for purchase of equipment, materials, etc., rather than having to wait for progress payments which are not made until actual work items are completed.

(2) USAID considers mobilization payments to contractors selected under competitive bidding as advantageous since they enhance competition and reduce contract costs. The USAID official who approves the Invitation for BIDS (IFB) must consider the reasonableness of proposed mobilization payments and determine before issuance of the IFB that: (1) a mobilization payment in the amount proposed is necessary to avoid restricting competition and (2) it may be reasonably assumed that a compensating financial benefit will accrue to USAID and the host country as a consequence of providing the payment. This written determination will become part of the official USAID project file.

f. Local Currency Payments

The contract includes the procedures for payment of local currency. Local currency payments may be made on the basis of work completed on the items quoted in local currency in the Bill of Quantities in unit price contracts. For either lump-sum or unit-price contracts, a ratio of dollar and local currency payments may be set forth in the contract. For example, if contract expenditures will be primarily dollars in the early stages and local currency in the latter stages, but the total contract price is 50 percent dollars and 50 percent local currency, the contract may specify that each progress payment will be payable at a ratio of half in dollars and half in local currency. Another case where a ratio might be appropriate is when dollar and local currency expenditures are not readily segregated.

The contract also states to whom vouchers for local currency are submitted and the required documentation for local currency payment. In most cases, the documentation for local currency payment will be similar to that for dollar payments as set forth in Section 3.6.4.2. If local currency payments are made by USAID, the Activity Manager approval (subparagraph 3.6.4.2.i) is required.

3.6.4.2 Documentation for Payment

Regardless of the method payment used, appropriate documentation, as discussed below, must be submitted in order to receive payment.

a. Voucher

The voucher, SF 1034, "Public Voucher for Purchases and Services Other Than Personal" (Attachment 2F), is to be submitted in an original and three copies, normally prepared by the U.S. banking institution under Letters of Commitment, by the Contracting Agency or Engineer under Direct Reimbursement or by the contractor under Direct Letters of Commitment.

b. Contractor's Invoice

For fixed price contracts, the Contractor submits one copy of its invoice describing the services performed and identifying the sections or paragraphs in the covering contract which contain the terms of payment. Any reimbursable costs for which payment is invoiced shall be itemized in detail and the invoice shall indicate that the contractor has already incurred costs for the items being claimed.

c. Evidence of Shipment

For each shipment of equipment, materials, and commodities during the period covered by the request for payment:

(1) A copy or photostat of the bill of lading (ocean, charter party, airway, barge, or truck) or parcel post receipt evidencing shipment from the source country or a free port or bonded warehouse to the host country. The bill of lading shall indicate the carrier's complete statement of charges including all relevant weights, cubic measurements, rates, and additional charges whether or not freight is financed by USAID.

(2) Where shipment is effected from a free port or bonded warehouse, a copy of the bill of lading, bearing a notation of the freight costs, covering shipment from the source to the free port or bonded warehouse, and, if the free port or bonded warehouse is located within the host country, accompanied by a delivery receipt evidencing release from the free port or bonded warehouse to the contractor. The date of the delivery receipt will be considered as the shipment date for the transaction and therefore must be dated within such delivery period as may be specified in the Letter of Commitment.

(3) When commodities are procured by the contractor on a cost reimbursement basis, the contractor shall obtain from the supplier and submit with its invoice a completed form USAID 1450-4, "Supplier's Certificate and Agreement with the

Agency for International Development for Project Commodities/Invoice and Contract Abstract," for each individual transaction which exceeds \$2,500 in value.*

d. Contractor's Certificate and Agreement (Attachment 2G)

In accordance with the rule in Section 2.11.3, the "Contractor's Certificate and Agreement with the Agency for International Development, Contractor's Invoice and Contract Abstract," form USAID 1440-3, shall be prepared in accordance with instructions thereon, and submitted with each request for payment.

e. Borrower/Grantee's Certification for Reimbursement

When Direct Reimbursement to the Borrower/Grantee is used, the following certification, signed and dated by the Contracting Agency, must accompany the required documentation:

"Pursuant to Agreement No. _____, dated _____, the Borrower/Grantee hereby requests reimbursement and certifies as follows:

*See Attachment 20 of this chapter for a copy of this form.

1. The Borrower/Grantee has not applied for or received reimbursement for the cost of any of the items for which reimbursement is requested and will not obtain such reimbursement out of the proceeds of any other loan or grant available to the Borrower/Grantee.

2. If pursuant to a loan or grant agreement some portion of the total payment for the specific goods and services covered herein is to be met from other than USAID sources, the Borrower/Grantee certifies that the total payment was \$_____, of which the sum of \$_____ was borne by _____.

f. Certification of Performance for Payments Other Than Final

Under any of the payment methods, when the request for payment is made by the Contracting Agency or the contractor, a certificate, signed and dated by the Contracting Agency or Engineer (if formally authorized) is required to accompany invoices for payments (other than final payment) as follows:

"The (Contracting Agency) certifies that (1) the services (or equipment and materials) for which payment is requested have been satisfactorily performed (delivered) and (2) the payment requested is in accordance with the terms of the contract."

Contracts may provide that if the contractor submits an invoice and the Contracting Agency or Engineer fails to execute and deliver a certification of performance within a given period; e.g., 30 days after submission of the invoice, payment will be made without

such a certification, unless a certificate of nonperformance of specific items is delivered within such period. In such a case payment with respect to the listed items shall be withheld subject to adjustments being made in subsequent billings.

g. Certificate of Performance for Final Payment

In addition to the above documentation, the following certificate, signed and dated by the Contracting Agency or Engineer (if formally authorized), is required to accompany the invoice for final payment under any of the payment methods:

"The (Contracting Agency) certifies that the services (or equipment and materials) for which final payment is invoiced meet in all respects the specifications prescribed in the covering contract, and the amount invoiced is properly due and payable under the terms of the contract."

h. Termination Claims

If the contract has been terminated pursuant to the provisions contained therein, the claim for termination costs is accompanied by:

- (1) Written justification by the contractor supporting in detail the claimed charge.
- (2) One of the following:
 - (i) Written concurrence by the Contracting Agency to the contractor's claim, or
 - (ii) A certified copy of an arbitration award.

i. Administrative Approval by USAID Activity Manager

An administrative approval by the USAID Activity Manager is to be shown on the original of the SF 1034 whenever Direct Reimbursement to the Borrower/Grantee or a Direct Letter of Commitment to the contractor is used. This administrative approval is not required when a Bank Letter of Commitment is used.

- (1) Direct Reimbursement to the Borrower/Grantee:

The administrative approval should read:

"I have reviewed the voucher, the request for reimbursement and supporting documentation attached thereto. Based on this documentation and my personal knowledge of the project, I see no reason to withhold payment. Therefore, the voucher is administratively approved for payment subject to the final review and certification of the USAID Paying Office."

- (2) Direct Letter of Commitment to the Contractor

(i) When the USAID Activity Manager has ready access to the place of performance or direct personal knowledge of contractor performance, the administrative approval should read:

"I have reviewed the voucher, the related invoice(s) and supporting documentation. Based upon: (a) my personal knowledge of the project, (b) the representations of the Contractor in the Contractor's Certificate (form USAID 1440-3), or other documentation, and (c) the representations of the Borrower/Grantee in the Certificate of Performance, I see no reason to withhold payment. Therefore, the voucher is administratively approved for payment subject to the financial review and certification by the USAID Paying Office."

(ii) When the USAID Activity Manager does not have ready access to the place of performance or does not have direct personal knowledge of contractor performance, the administrative approval should read:

"Based on the summary data provided which is applicable to the voucher and supporting documentation, including representations of the Contractor and the Borrower/Grantee, and my personal knowledge of the project, I see no reason to withhold payment. Therefore, the voucher is administratively approved for payment subject to the financial review and certification by the USAID paying Office."

3.6.5 Additional Steps if Prequalification Was Not Used

3.6.5.1 Advertising

If prequalification was not used, the Contracting Agency must advertise the availability of the Invitation for Bids in accordance with the rule in Section 2.4. The Notice for the Commerce Business Daily should include the following information:

- a. A brief description of the project the services involved, and proposed schedule for execution;
- b. The name of the Contracting Agency;
- c. The address(es) at which interested firms may obtain Invitations for Bids, including the cost and method of payment for the IFB (if any);
- d. The deadline for receipt of bids;
- e. A statement regarding the eligible nationality of the contractor and the source of any incidental goods;
- f. A statement regarding the sources of funding.

See Attachment 2B for more detailed guidance in preparing Notices.

3.6.5.2 Qualification information

In the exceptional cases where bidders are not prequalified, the bidder's qualifications to perform satisfactorily must be established after bids have been received. To facilitate the evaluation of a bidder's qualifications in these circumstances, it is recommended that an evaluation questionnaire such as the one in Attachment 2C be included with the Invitation for Bids. The IFB must state the factors to be used in evaluating bidders' qualifications. The qualifications information should be enclosed in a separate envelope and opened and reviewed prior to bid opening. The bids of any unqualified bidders should be returned unopened.

3.6.6 Special Procedures for Complex Industrial Plants

3.6.6.1 Two-State Building

a. In construction of complex projects, facilities, or plants, where the contract covers work of significant complexity or diversity and technical specifications cannot be firmly established or are particularly complex, it is sometimes advantageous to provide for a two-state procedure, subject to approval by the Mission Director. Doing so will give the Contracting Agency an opportunity to establish technical requirements through discussions with prospective bidders before the prices are submitted and reduce the possibility that competent and experienced contractors' bids do not comply with technical specifications because they do not understand the technical requirements of the project. Such cases may be encountered when the contract will cover the supply of numerous items of permanent equipment, their installation and related construction activities. The two stages in this procedure are submission of technical proposals followed by submission of priced bids. Variations of the procedure discussed below may also be used.

b. Following completion of advertising and prequalification (if used), the IFB is distributed to prequalified firms (or all responding firms if prequalification was not used). The IFB contains:

- (1) The best possible description or specifications of the services and supplies required;
- (2) Notification that a two-stage bidding procedure is being used;
- (3) The requirements for the technical proposal e.g., drawings, data, etc., to be submitted;
- (4) A statement that technical proposals shall not include price information;
- (5) The date by which the proposal must be submitted;
- (6) A statement that the Contracting Agency and/or Engineer may discuss the technical aspects of the proposal with the firm submitting it;
- (7) A statement that the Contracting Agency reserves the right to issue addenda amending specifications to meet its needs;

(8) A statement that in the second stage of the procurement, only bids based upon technical proposals determined to be acceptable initially or as result of discussions will be considered for award;

(9) A statement that firms will be appropriately notified upon completion of the technical evaluation, whether or not their technical proposals are acceptable.

c. Technical proposals are evaluated by the Contracting Agency or Engineer and categorized as acceptable or unacceptable. Proposals should not be deemed unacceptable when reasonable effort on the part of the bidder could bring the proposal to an acceptable status. The Contracting Agency shall arrange for any necessary discussion with firms submitting technical proposals for the purpose of obtaining additional information, clarification, or revisions which may be required. If it is determined that a technical proposal is not reasonably susceptible to being made acceptable, it should be classified as unacceptable, and discussions with the offeror should not be conducted.

d. After the proposals have been evaluated, a request for priced bids is sent to those firms whose technical proposals have been found acceptable. The technical specifications will be those contained in the bidder's technical proposal, as modified and accepted during the discussions between the offeror and the Contracting Agency and/or Engineer. The lowest responsive, responsible bidder is then awarded the contract as in Section 3.8.

3.6.6.2 Turnkey Contracts

Turnkey contracts may also be used for complex projects, facilities, and plants, for example, chemical plants. These are discussed in greater detail in Section 3.1.2.

3.7 Solicitation of Bids

3.7.1 Distribution of the IFB

The Contracting Agency shall provide the Invitation for Bids to all prequalified firms, or, if prequalification was not used, to all firms requesting the IFB and any other firms the Contracting Agency wishes to solicit. Normally, there is no charge for the IFB, but, if a charge is made, it shall not exceed the cost of production and mailing. See Section 4 of this Chapter for a discussion of the contents of the IFB.

3.7.2 Prebid Conference

USAID recommends, and in some cases, may require by a Project Implementation Letter or otherwise, a prebid conference for construction services. The location and timing of such conferences should take into account the mutual convenience of the Contracting Agency and the bidders. The purpose of the prebid conference is to exchange information with potential bidders concerning local conditions, labor, and job requirements, any questions regarding the bid documents or USAID procedures, and other matters pertinent to the contract. Addenda to the IFB are prepared to communicate to all bidders any changes or clarifications of the IFB which are considered necessary in light of the prebid conference.

3.7.3 Addenda to the Invitation for Bids

If, after issuance of the IFB, it becomes necessary to make any amendments or corrections, a written addendum to the IFB is prepared. In accordance with the rule in Section 2.2.2, USAID must approve the addendum before it is distributed to prospective bidders. The addendum is distributed promptly to all firms which have been sent copies of the IFB. Issuance of an addendum may necessitate an extension of the bid closing date to afford bidders adequate time to prepare or modify their bids in light of the information in the addendum. Information given to any prospective bidder concerning the IFB shall be furnished promptly to all other prospective bidders as an addendum to the IFB if the information is related to the preparation of bids or would be prejudicial to any uninformed bidder. The bidder must acknowledge receipt of the addenda as a part of its bid.

3.8 Contract Award

3.8.1 Receipt of Bids

Bids received prior to the closing time specified in the IFB shall be kept secure and unopened until the bid opening date and time established in the IFB. However, bids may be withdrawn or modified prior to bid opening.

3.8.2 Late Bids

Received after the time specified in the IFB should be returned unopened to the bidder. (See also Section 3.6.2)

3.8.3 Qualification of Bidders (if prequalification was not used)

If bidders were not prequalified, the procedure in Section 3.6.5.2 should be used before the priced bids are opened.

3.8.4 Bid Opening and Evaluation

a. The sealed bids received prior to the closing time shall be opened and read publicly at the time and place specified in the IFB. At a minimum, the name of the bidder and total bid price are announced. The bids are recorded by IFB number, date, name of bidder, amount(s), whether a bid bond was included and other appropriate identification.

b. The Contracting Agency or its authorized agent shall conduct an evaluation of the bids. Bids must be "responsive" and meet the test of reasonableness of price. The updated detailed cost estimate (see Section 3.2.1) is used to judge the reasonableness of the prices bid. In addition, the bidder must be a "responsible" firm.

(1) A "responsive bid" is one that complies with all terms and conditions of the IFB without material modification. A material modification is one which affects in any way the price, quality, scope, or completion date of construction services or which limits in any way responsibilities, duties, or liabilities of the bidder or any rights of the Contracting Agency or USAID as any of the foregoing have been specified or defined in the IFB. The Contracting Agency may waive any minor informality in a bid which does not constitute a material modification. The Contracting Agency should reject any bid which is nonresponsive as defined above since USAID would not approve the contract for financing. Bidders should

not be allowed to modify nonresponsive bids after bid opening in order to make them responsive. However, the Contracting Agency may request the bidder to provide clarifications of the bid as long as no material modification is made.

(2) The bid amount is composed of U.S. dollars plus local currency. The local currency portion of the bid amount is converted to dollars at the predetermined exchange rate specified in the Instructions to Bidders to arrive at the total bid amount. If any factor other than price is to be used in evaluating bids, the monetary value of each such factor will be computed in accordance with the formula included in the Instructions to Bidders. A bid so adjusted is known as the "evaluated bid."

Bids submitted for unit price contracts are examined to ascertain that they are not grossly "unbalanced," i.e., that priced quoted on while unduly low prices are quoted for items to be completed during the latter stages of the project. Such examination is of great importance because a contractor who has been paid an amount far in excess of the real value of the work at an early stage will have rapidly decreasing financial interest in completing the project or, at least, adhering to the construction schedule. While a performance bond or guaranty provides some protection against failure by a Contractor to complete the work, the loss to the Contracting Agency caused by the delay in having another contractor complete the work is usually not fully compensated by the bond or guaranty. An important safeguard against a contractor's failure to perform is thus guarding against unbalanced bids. The IFB should state that if a bid is found to be grossly unbalanced it may be rejected.

(3) The "responsibility" of the bidder is usually determined at the time of prequalification. Any prequalified bidder is, by definition, "responsible". If the prequalification was not performed prior to issuance of the IFB, qualification information is requested in the IFB pursuant to Section 3.6.5.2 and the responsibility of bidders is determined on the basis of information submitted with the bids. If there has been a significant time lag between the time of prequalification and issuance of the IFB, bidders may be requested to submit any changes in the prequalification information at the same time as they submit bids. The bid of any bidder found not to be qualified at this time should be rejected.

c. The Contracting Agency shall prepare a detailed written statement explaining the rejection of any low bid(s) that is determined to be nonresponsive or, if there has been no prequalification, the reasons for finding a firm to be not qualified. With USAID approval, if required in accordance with Section 2.2, the Contracting Agency may reject all bids. Rejection of all bids is appropriate if all prices bid are unreasonably high, or if there is no responsive bid.

3.8.5 Protests by Bidders

Protests of the contractor selection and award processes, which are submitted by bidders contending for award, should be directed to the Contracting Agency in accordance with its policies and procedures. Consistent with its role as a financing entity and not a party to the contract, USAID will not become directly involved in the resolution of such protests. However, in accordance with subsection Section 3.8.6 of this chapter, the equitable settlement of such protests will be a consideration in the determination to grant USAID approval of the contract

award. Costs incurred by the Contracting Agency in the adjudication and settlement of protests by bidders are not subject to reimbursement by USAID.

3.8.6 Requesting USAID Approval of Proposed Award

If required in accordance with Section 2.2, USAID approval of the contractor and the contract is required before contract award. The Contracting Agency should submit the following documentation to USAID.

- a. The final contract (unsigned) with a statement either that it is identical to the contract included in the previously approved IFB, or showing how the contract included with the IFB has been changed. If, for any reason the contract included in the IFB is not used, the Contracting Agency submits a draft of the proposed contract to USAID for its approval.
- b. The record of bids received, and the written statement prepared in accordance with Section 3.8.4.c, if required; and
- c. A statement that the selected bidder is responsible and submitted the lowest responsive bid (see Section 3.8.4), the contractor is otherwise eligible for the contract (see Sections 2.5 and 2.6), and that the bid price is reasonable (see Section 3.2).
- d. Bid protests and documentation of their disposition.

This documentation is retained in USAID's files.

3.8.7 USAID Approval of Proposed Award

If USAID finds the proposed award acceptable for financing after reviewing the documentation submitted by the Contracting Agency in accordance with Section 3.8.6, it informs the Contracting Agency of its approval. Otherwise, USAID informs the Contracting Agency of the reasons for its objections to the proposed award and discusses with it the considerations necessary to obtain a mutually acceptable award.

3.8.8 Notification of Award

Upon receipt of USAID's approval of the proposed award, the Contracting Agency informs the successful bidder that it has been awarded the contract. Usually in the same communications, the Contracting Agency proposes a date and place for signature of the contract.

3.8.9 Signature of Contract

The contract is signed by the Contracting Agency, usually by using the Form of Agreement (Attachment 2Q). However, the successful bidder is not notified of the award until USAID approval has been obtained.

3.8.10 USAID Approval of the Signed Contract

A copy of the signed contract is submitted to USAID for approval in accordance with the rule in Section 2.2.

3.8.11 Distribution of Contract Copies

After the Contracting Agency is advised in writing of USAID's approval, copies of the signed contract are distributed to USAID in accordance with the rule in Section 2.10. Additional copies may be distributed as appropriate.

3.8.12 Notification To Unsuccessful Bidders

Unsuccessful bidders are notified of the award by letter. Attachment 2H contains a sample letter.

3.9 Competitive Negotiation

In accordance with the rule in Section 2.3.2, if the Contracting Agency has failed, after diligent efforts, to secure a contract through formal competitive bid procedures and further use of formal competitive procedures clearly would not be productive, competitive negotiation may be used. Such a situation might arise if no responsive bids are received, or if all bid prices are so high that they exceed the funds available for the project.

Competitive negotiation permits negotiation with two or more offerors to arrive at a satisfactory contract, price and other factors considered. USAID must approve the use of competitive negotiation and the procedure to be followed in the conduct of negotiations. In establishing the procedure, the Contracting Agency should consider the following:

- a. All bids received in response to the IFB are formally rejected.
- b. The Contracting Agency should analyze, to the extent information is available, the reason that the formal competitive bid procedure was unsuccessful. If the scope of work for the contract can be redefined or specifications or the terms and conditions can be modified to eliminate the cause of unacceptable bids, the result may be that the Contracting Agency should issue a new IFB and use formal competitive procedures again. On the other hand, if modifying the IFB is not likely to result in more responsive bids or if the Contracting Agency can benefit from considering input from potential contractors as to possible alternatives for reducing costs or revising specifications or other terms and conditions, then negotiation is appropriate.
- c. The Contracting Agency decides with whom negotiations should be conducted. It may negotiate with all prequalified firms, only those firms which submitted bids, or two or more firms who submitted the lowest bids. The decision with whom to negotiate should take into consideration the benefits of opening competition, the time constraints of getting the project underway, whether prequalification information is still current, and other relevant factors. If the specifications need considerable revision, it is generally most appropriate to invite all prequalified firms to negotiate. The firms invited to negotiate should be requested to submit proposals to use as the basis of negotiations.

Negotiations should be conducted fairly and expeditiously. All firms selected for negotiation are informed at the same time and are given the same information about the bases of negotiation, including the factors to be considered in making the award. If a substantial change occurs during negotiations in the Contracting Agency's requirements or a decision is reached to relax,

increase, or otherwise modify the scope of work or contract terms, all offerors are advised of the change in writing.

The Contracting Agency should insure that "technical transfer" is avoided during the negotiations. This occurs when technical aspects of one offeror's proposal are transmitted to other offerors and may be incorporated in their revised proposals.

No indication shall be given to any offeror of a competitor's price which must be met to obtain further consideration since such a practice constitutes an auction which must be avoided. Likewise, no offeror shall be advised of its relative standing with other offerors as to price or be furnished information as to the prices offered by other offerors.

All offerors are invited to submit their best and final written offers based on negotiations by a specified date and time. The Contracting Agency evaluates the final offers based on criteria communicated to all offerors and awards the contract to the best offeror in terms of those criteria. Detailed records of all negotiations should be prepared by the Contracting Agency.

If a selection panel is used to evaluate the offers, USAID will furnish an observer to monitor the selection panel proceedings for procurements expected to exceed \$250,000. The observer will not actively participate in the proceedings, other than answering questions concerning USAID procedures and providing liaison with USAID in obtaining business references; USAID will not conduct a separate ranking of the offers.

3.10 Contract Administration

The responsibility of the Contracting Agency and USAID for the contract does not cease when the contract is signed. The Contracting Agency through the Engineer has the primary responsibility for ensuring that the contractor performs in accordance with the terms of the contract. USAID may have certain approval responsibilities for contract administration actions (such as subcontracts, change orders, amendments, etc.) as set forth in the contract. Also, USAID has certain responsibilities under the loan or grant which affect the contract, such as waiving nationality and source requirements, waiving marking requirements, etc. Both the Contracting Agency and USAID must make certain certifications in order for the contractor to be paid (see Section 3.6.4.2).

The Contracting Agency should be aware of contractor performance at all time. Any problems or delays should be analyzed and appropriate action taken as soon as possible. Appropriate action might include noncontractual remedies (such as expediting commodities through customs) or contractual action (change order, invoking force majeure, or termination).

3.11 Auditing the Contract

* Arrangements must be made for properly auditing cost-reimbursable contracts and subcontracts that exceed **\$300,000** to verify the costs claimed and to finalize provisional overhead rates.

These arrangements will include setting aside project funds to cover the cost of the audit, as necessary, and the selection of the auditing entity.

*Audits of cost-reimbursable contracts under **\$300,000** and of contract requirements with regard to source, use of U.S.-flag carriers, etc. in all types of contracts will be conducted where there is reason to question contractor representations.

*U.S.-based firms - The host country contracting agency should request M/OP/PS/CAM, through the Mission, to arrange the audit of costs claimed under cost-reimbursable contracts in excess of **\$300,000** awarded to U.S.-based firms. Audits will be conducted by the cognizant U.S. audit agency or an independent auditor. As circumstances dictate, the contracting agency should also request audits of cost in smaller cost-reimbursable contracts and of other contract requirements.

*Non-U.S.-based firms - The audit of non-U.S.-based firms shall be a cost-incurred, financial audit performed by the principal audit agency of the host country or an independent audit agency acceptable to the USAID Inspector General and as set forth in the Project Agreement or a Project Implementation Letter. When the need to audit the costs incurred under a cost-reimbursable contracts that is less than **\$300,000** or the need to audit other contract requirements is indicated, the Mission should be consulted to provide liaison with the USAID Inspector General concerning the arrangements to be made for the audit.

*The guidance contained in Guidelines for Financial Audits Contracted by Foreign Recipients, **July 1998**, shall be followed in selection of the acceptable auditors. Guidance in planning, conducting, and reporting on the results of the audit contained in the Guide for Financial Audits Contracted by the Agency for International Development, January 1991, shall be observed by the auditors. These USAID Inspector General publications are available from IG/A/FA and the USAID Regional IG offices.

3.12 Contract Closeout

The contract should be closed out in an orderly fashion upon satisfactory completion of the work by the contractor. Final payment to the contractor is withheld until the contractor provides evidence that it has met all of its obligations under the contract and all required certifications (including acceptance of the work by the Contracting Agency) have been executed and the contract has been audited, as provided above. The USAID Activity Manager will be notified of contract closeout and contract files will be maintained in storage at least three years from the final disbursement under the project agreement.

4.0 Contents of the Invitation for Bids

The Invitation for Bids is the basic document in construction contracts. It not only requests firms to compete for the contract; it also includes the specifications and considerations governing the performance of the work--that is, the contract itself. It establishes the same criteria against which all bidders are judged. If the IFB is not precise and complete, with all information necessary for firms to prepare bids which can be evaluated on a common basis, the contracting process will be seriously delayed until deficiencies can be corrected. On the other hand, a carefully prepared IFB will expedite contract award within a short time after bid opening. The IFB usually includes the following sections:

- a. Cover letter inviting bids;

- b. Instructions to Bidders;
- c. Form of Tender;
- d. Bill of Quantities;
- e. Forms of Bid, Performance and Payment Bonds or guaranties;
- f. Form of Agreement;
- g. Conditions of Contract, Parts I and II; and
- h. Technical Specifications and Drawings.

These sections of the IFB are discussed in detail in the following paragraphs.

4.1 Cover Letter Inviting Bids

The Cover Letter is sent to each of the firms invited to bid, identifies the IFB by number and lists the parts of the IFB. (See sample in Attachment 2I.)

4.2 Instructions to Bidders

The Instructions to Bidders include all the information the bidder needs to submit a bid in the required form and at the specified time and place. Any conditions affecting actual performance of the contract are included in the conditions of contract or specifications, not in the Instructions to Bidders. A sample of Instructions to Bidders, which must be adapted to each specific project, is in Attachment 2J.

The Instruction to Bidders include the following as appropriate:

- a. Invitation number.
- b. Name and address of Contracting Agency
- c. Date of issuance.
- d. Date, hour, and place of opening. (Prevailing local time should be used.) A statement regarding late bids should be included (see Section 3.6.2).
- e. A brief description of the proposed construction and the project of which it is a part if there are other project elements.
- f. Permission, if any, to submit telegraphic bids.
- g. Permission, if any, to submit alternative bids, including alternative material or design. In order for an alternative bid to be considered, both the basic bid (responsive to the IFB) and the alternative bid should be the low bid.
- h. A requirement that all bids must allow a period for acceptance of not less than the minimum period stipulated in the Invitation for Bids, and that bids offering less than the

minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other preaward actions.

- i. The name and address of the person to whom questions are to be addressed.
- j. The method of issuing addenda to the IFB.
- k. Bid bond or guaranty requirements (see Section 3.6.3)
- l. Arrangements to be made for inspecting the site and data which may affect performance of the work.
- m. A statement of the extent or limitations concerning the work permitted to be done by subcontractors.
- n. Information concerning the prebid conference.
- o. A statement that the bid price is the sum of all dollar and/or local currency amounts and the exchange rate to be used at arriving at the total bid amount.
- p. A statement concerning the currency in which agents' fees may be paid.
- q. A statement of how dollar and local currency portions of the contract will be paid (see Section 3.6.4), usually by reference to the contract provisions.
- r. A list of the documents to be included in the bid.
- s. A statement concerning modifications to bids.
- t. If prequalification was not used, the procedure for determining whether bidders are qualified.
- u. If factors other than bid prices are to be considered in the evaluation of bids, the formula by which the monetary value of each such factor will be computed.
- v. A statement warning against grossly unbalanced bids (see subparagraph 3.8.4.b.2).
- w. A statement that the contract will be awarded to the lowest responsive, responsible bidder.
- x. A statement that the Contracting Agency may, at its option, reject all bids.
- y. A statement that requests for clarification of the IFB and explanations of the award should be addressed to the Contracting Agency.

4.3 Form of Tender

The Form of Tender included in the IFB is to be completed by the bidders. Providing this form assures that all bidders accept the same obligations in submitting their bid and make their

bids on a comparable basis. The Appendix to the Tender is to be completed by the Contracting Agency prior to issuance of the IFB. A sample is in Attachment 2K.

4.4 Bill of Quantities

The Bill of Quantities lists the component parts of the contract work and provides for the pricing of each of these elements. The Bill of Quantities is often referenced to the Technical Specifications and includes such components as preparatory work (e.g., drilling boreholes necessary to determine soil characteristics), establishing a camp for the contractor's work force, permanent equipment and materials to be supplied by the contractor, etc. The estimated quantity of each item is shown. The bidder fills in the unit price for the item, and the amount (i.e., quantity times unit price). The Bill of Quantities may include "Provisional Items." Provisional items are items which may or may not be necessary in performing the contract, such as overhaul or daywork and which are performed only at the direction of the Engineer. Lump-sum amounts may be included as appropriate. Attachment 2L is a sample Bill of Quantities.

4.5 Forms of Bid, Performance, and Payment Bonds or Guaranties

4.5.1 The requirements for bid, performance, and payment bonds and the amounts for these bonds must be specified in detail (see Section 3.6.3 for guidance). If special formats are required these must be listed and furnished to prospective contractors.

- a. A sample bid bond is illustrated in Attachment 2M.
- b. A sample performance bond is illustrated in Attachment 2N.
- c. A sample payment bond is illustrated in Attachment 2P.

In most cases it is sufficient to indicate that the format for bid, performance and payment bonds will be in accordance with standard U.S. commercial practice.

4.5.2 If bank guaranties are used, the amount of the guaranties must be stated. If the Contracting Agency requires specific wording of the guaranty, a sample format should be included in the IFB.

4.6 Form of Agreement

The Form of Agreement is usually a brief statement, to be signed by the Contracting Agency (referred to as the ("Employer")) and the successful bidder, listing the documents forming part of the contract. It obligates the Contractor to perform in accordance with the listed documents and the Employer to make payments to the Contractor in accordance with the provisions contained in the Conditions of Contract. The Form of Agreement and the Conditions of Contract discussed below may be combined into one document. A sample of the separate Form of Agreement is in Attachment 2Q.

4.7 Conditions of the Contract

- a. The Conditions of Contract must be carefully adapted to the conditions under which the Contractor will perform the work, set forth precisely the rights and obligations of the parties and include provisions for payment, inspection, release of bonds or guaranties,

and generally contain all provisions to define the relationship of the parties and, where a consulting engineer ("Engineer") is used to assist the Employer, the Engineer's rights and obligations.

b. With respect to civil work contracts, Conditions of Contract have been published by the Federation Internationale des Ingenieurs- Conseils (FIDIC) for international usage. The International Conditions of Contract for Works of Civil Engineering Construction* have been widely used for civil works construction and contractors are generally familiar with them. Since these Conditions of Contract were designed to have the broadest possible application, they contain two parts which must read together. Part I contains the "General Conditions" and is reprinted in Attachment 2R. Part II contains "Conditions of Particular Application" which adapt the provisions of Part I to a particular project and delete, amend, or supplement those provisions. The Part II shown in Attachment 2S has been adapted by USAID to modify Part I for USAID-financed construction contracts. Certain provisions must be used (as discussed in Sections 2.11 and 4.7.2) whether or not Part I is used. If the FIDIC General Conditions in Part I are not used for the Conditions of Contract, they may serve as an excellent guide to drafting contract clauses and as a checklist of matters to be covered.

*Copies of these Conditions of Contract and a separate guide to their use are available from:

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

And member associations, including

American Consulting Engineers Council
Suite 802
1015 15th Street, N.W.
Washington, D.C. 20005-2670
USA

4.7.1 General Conditions - Part I

The contract provisions in Attachment 2R are the FIDIC Conditions of Contract for Works of Civil Engineering Construction, Part I - General Conditions, Fourth Edition, 1987. While use of these provisions is not mandatory*, they are strongly recommended. The FIDIC General Conditions have been accepted by the appropriate professional societies in many countries, and most contractors will be familiar with them.

4.7.2 Conditions of Particular Application - Part II

The Conditions of Particular Application (Attachment 2S) are prepared by the Contracting Agency as appropriate for the specific contract. They must accomplish three things.

First, Part I of the FIDIC Conditions of Contract contain several provisions which must be elaborated in Part II. These are discussed in Section 4.7.2.1. Second, the clauses required by the rules in 2.11 must be incorporated into USAID-financed contracts. These are discussed in Section 4.7.2.2. Third, modifications to Part I clauses or additional clauses may be appropriate to reflect the conditions on the host country or the particular project. These are discussed in Section 4.7.2.3. In order to

*A settlement of disputes clause is mandatory, but certain modifications to the FIDIC clause are permitted within the restrictions of Section 4.7.2.2.h.

facilitate the preparation and use of Part II, it is recommended that the clause numbering system of Part I be retained. The clauses in Part II which elaborate on or modify Part I clauses should show the same clause and paragraph number. Additional clauses (including the clauses required by USAID and the project specific clauses) should be numbered consecutively beginning with 73. Attachment 2S is arranged in this format. In addition, below each clause is a notation showing whether the clause is an elaboration or modification of a Part I clause, an USAID required clause, or a project specific clause.

It should also be noted that the term "Employer" is used in lieu of "Contracting Agency."

4.7.2.1 Elaboration or Modification of Part I Provisions

- a. Subclause 1.1. "Employer" should be defined by specifying the name of the Contracting Agency. Additional definitions may be helpful to clarify recurring expressions, avoid repetition, or introduce abbreviations used in the contract.
- b. Clause 2. This clause identifies the Engineer's Representative and specifies the Engineer's authority to act as the Employer's agent in approving work under the contract, issuing change orders, certifying payments, and the like. (See the discussion in Section 3.1. Clause 2 in Attachment 2S is an example and must be adapted for each contract.
- c. Subclause 3.1. This clause requires USAID approval, in addition to approval by the Employer, of any assignment of obligations under the contract.
- d. Subclause 4.1. This clause requires USAID approval of all subcontracts above a stated amount. The amount should be established taking into account the relative value of the contract and subcontracts and the type of work to be subcontracted. It also sets forth required clauses to be used in subcontracts. If the contractor will procure equipment and materials on a cost reimbursement basis, the clause should require that such procurements will be made in accordance with USAID Country Contracting Handbook, Chapter 3, "Procurement of Equipment and Materials."
- e. Subclause 5.1. This clause specifies the governing version of the contract if it is prepared in more than one language (see the rule in Section 2.7.1) and which country and state laws govern the interpretation of the contract.
- f. Subclause 5.2. This clause states the prevailing order of the sections of the contract documents.

- g. Subclause 14.1. This clause establishes the date by which the contractor will submit a detailed work plan and time schedule to the Engineer.
- h. Subclause 21.1. This clause may require the contractor to obtain additional insurance of the works.
- i. Subclause 34.1. This clause sets forth any additional conditions concerning labor and wages, including housing and other facilities for the workers, hours and conditions of working, rates of pay, labor laws, etc.
- j. Subclause 51.2. This clause provides that any variations (i.e., change orders) which increase or reduce contract costs by more than a stated amount are to be approved by USAID.
- k. Subclause 54.3. This clause revises Subclause 54.3 of the General Conditions to provide conditions concerning Contractor liability for customs duties and other taxes if any part of the imported constructional plant is used for any other project in the host country, in lieu of being re-exported upon completion of the contract.
- l. Clause 60. This clause covers all areas relating to payments to the contractor including progress payments, documentation requirements, retentions, mobilization costs, local currency payments, and the like.

(1) In fixed-priced contracts, the contract amount is the total price of the contract in dollars and local currency. For lump-sum contracts, that amount is paid to the contractor (regardless of the costs actually incurred) if the contractor performs the work satisfactorily as certified by the Contracting Agency or Engineer. In unit price contracts, the contractor is paid for work performed which is calculated by multiplying the actual quantities, as certified by the Contracting Agency or Engineer, by the fixed unit price stated in the contract for that item of work.

(2) The methods of payment are discussed in Section 3.6.4. This clause sets forth the procedures to be followed and documentation (including certifications) to be submitted. Under fixed-price contracts, payments may be made either in one sum at completion of the contract or, as is usually the case, partial payments may be made during the term of the contract. Partial payments may be scheduled at specified time intervals or upon completion of specified portions of the work. This clause would also include the amount to be retained by the Contracting Agency from each billing (usually 5-10 percent.) This clause also provides that the final payment to the contractor, including retentions, is withheld until it has met all its obligations under the contract, unless the Contracting Agency and the contractor agree otherwise. The obligations include completion of all services and acceptance of the work by the Contracting Agency, receipt of required certifications and warranties and a release by the contractor of all claims against the Borrower/Grantee.

(3) Construction contracts often require substantial expenditures by the contractor to transport equipment and materials to the site. If the contractor uses its own funds for such expenditures, it usually recovers the cost of money, whether provided from the firm's own resources or borrowed, as part of the

contract price. The price bid, therefore, can be justifiably higher than it would be if the contractor did not incur any financing costs. It is thus frequently to the advantage of the Contracting Agency to make mobilization payments* to the contractor. The amount shall be limited to the minimum amount required to cover the contractor's needs before commencing actual construction. The contract should specify the amount of the mobilization payment, and the guaranties required from the contractor. Such guaranties may take the form of bond, bank guaranties, Letters of Credit, or similar security devices.

(4) Generally the local currency costs of the contract shall not be paid to the contractor in United States dollars, but shall be paid in local currency whether financed by USAID or otherwise. This clause specifies how local currency payments will be made, e.g., by whom, what documentation is required, which items will be paid in local currency or a ratio for dollar and local currency payments, or if dollars are to be converted, where such conversion shall be made.

m. Clause 67. A settlement of disputes clause is mandatory, but the clause set forth in the FIDIC General Conditions may be modified as set forth in Section 4.7.2.2.h.

n. Subclause 68.2. This clause sets forth the addresses of the parties to the contract and the Engineer, if any.

*These are termed "Advances" in the FIDIC clause.

o. Subclause 70.1. This clause provides for the upward or downward revision of the fixed price if certain defined contingencies occur. Such contingencies might include specific significant changes in the cost of basic materials, and the like. Use of this clause is appropriate where it is foreseeable that prices will fluctuate substantially during the period of performance and where conditions are identifiable and can be covered by a price adjustment. Administration of this provision can be difficult, and great care should be used in stating the conditions which will bring it into effect, and the formula to be used in determining the amount of the adjustment.

4.7.2.2 Mandatory Contract Clauses

In accordance with the rule in Section 2.11, the following clauses must be incorporated into every USAID-financed contract under the conditions discussed below:

a. Legal Effect of USAID Approvals and Decisions

Clause 73 in Attachment 2S must be included verbatim in each contract. (See Section 2.11.1)

b. Nationality, Source, and Cargo Preference

Clause 74 in Attachment 2S sets forth nationality, source, and cargo preference requirements. (See Section 2.11.2.)

c. Contractor's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract (Form USAID 1440-3)

Clause 60 in Attachment 2S includes the requirement that the contractor submit the form USAID 1440-3 with each request for payment. (See Section 2.11.3.)

d. Air Travel and Transportation

(1) Grant-Financed Contracts

Contracts financed by USAID grants must include Clause 76 in Attachment 2S. The language defining "available" and "unavailable" carriers must be used verbatim. (See Section 2.11.4)

(2) Loan-Financed Contracts

If the authorized source under a loan is Geographic Code 000, the clause is used as in paragraph (1) above. If the authorized source under a loan is Geographic Code 941, Clause 76 in Attachment 2S is modified to substitute "U.S., host country, or Code 941" for "U.S." wherever it appears.

e. Worker's Compensation Insurance

(1) Every contract financed by USAID must require worker's compensation coverage for contractor employees. (See Section 2.11.5 and Clause 77 of Attachment 2S.) All contracts financed by USAID involving performance outside the United States (except contracts exclusively for furnishing of materials and supplies) must provide for coverage as required by the Defense Base Act (42 USC 1651, et seq.), unless a waiver is obtained from the U.S. Department of Labor. (See subparagraph 4.7.2.2.e(3) below.)

***(2) All Defense Base Act (DBA) Insurance coverage under country contracts must be placed with in accordance with the blanket contract for guaranteed rates negotiated between USAID and Fidelity and Casualty Company of NY. In order to obtain coverage, contractors should contact:**

**Rutherford International, Inc.
5500 Cherokee Avenue, Suite 300
Alexandria, VA 22312
(703) 354-1616**

Agent for:

**Fidelity and Casualty Company of NY
333 South Wabash Avenue
Chicago, IL 60604**

(3) The U.S. Department of Labor may authorize the following exemptions to procuring DBA coverage under a contract:

1. Contractors with a DBA self-insurance program approved by the U.S. Department of Labor, and

2. Contractors with an approved retrospective rating plan for DBA.

(4) Contractors should be prepared to provide the following information from when applying for DBA coverage:

Company name and address,

Point of contact,

Telephone and fax numbers,

Contract number,

Brief description of type of work to be performed,

Period of performance,

Number of non-waived employees,

Country of performance, and

Projected employee remuneration (defined as overseas salary, post differential, and any overseas recruitment incentive).

(5) Waivers may be obtained for third-country nationals and cooperating country nationals but cannot be obtained under any circumstances for persons who are hired in the United States or who are citizens or residents of the United States. Waivers of the Defense Base Act insurance requirements are prepared by M/OP/E, USAID/W. Blanket waivers of the Defense Base Act insurance requirements for third-country nationals and cooperating country nationals are in effect in the following countries:

*

DEFENSE BASE ACT (DBA) WAIVER LIST

Afghanistan	Haiti	St Lucia
Albania	Honduras	St. Vincent
Antigua	Hungary	Senegal
Armenia	India	Serbia
Azerbaijan	Indonesia	Seychelles
Bahamas	Israel	Sierra Leone
Bangladesh	Italy	Slovak Republic
Barbados	Jamaica	Slovenia
Belarus	Jordan	Somalia
Belize	Kazakhstan	South Africa
Benin	Kenya	Sri Lanka
Bolivia	Korea	Sudan
Bosnia & Hercegovina	Krygyzstan	Swaziland
	Latvia	Syria

Botswana	Lebanon	Tajikistan
Brazil	Lesotho	Tanzania
Bulgaria	Liberia	Thailand
Burkina Faso	Lithuania	Togo
Burundi	Macedonia	Tonga
Cambodia	Madagascar	Tunisia
Cameroon	Malawi	Turkey
Cape Verde	Mali	Turkmenistan
Chad	Mauritania	Uganda
Chile	Mauritius	Ukraine
Colombia	Mexico	Uruguay
Costa Rica	Moldova	Uzbekistan
Cote d'Ivoire	Mongolia	Vietnam
Croatia	Montenegro	Western Samoa
Czech Republic	Morocco	Yemen
Democratic Republic of the Congo	Mozambique	Yugoslavia
Djibouti	Namibia	Zambia
Dominica	Nepal	Zimbabwe
Dominican Republic	New Caledonia	
Ecuador	Nicaragua	
Egypt	Niger	
El Salvador	Nigeria	
Equatorial Guinea	Oman	
Estonia	Pakistan	
Ethiopia	Panama	
Fiji	Papua New Guinea	
Gambia	Paraguay	
Georgia	Peru	
Ghana	Philippines	
Grenada	Poland	
Guatemala	Portugal	
Guinea	Romania	
Guinea-Bissau	Russian Federation	
Guyana	Rwanda	
	St. Christopher & Nevis	

A condition imposed by these blanket waivers is that the waived employee(s) must be provided worker's compensation coverage as required by local law or custom.

f. Marking

Clause 78 in Attachment 2S sets forth marking requirements for USAID-financed construction contracts. (See Section 2.11.6.)

g. Host Country Taxes

Clause 79 in Attachment 2S implements the exemption of the contractor from host government taxes. (See Section 2.11.7.)

h. Settlement of Disputes

(1) The contract must contain a clause which specifies impartial and effective procedures to settle disputes arising from the performance of the contract. Except as provided for in (4), the clause must conform to either (2) or (3) below. (See Section 2.11.8.)

(2) The clause may provide for final resolution, in the event an amicable settlement can not be reached, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The ICC rules are incorporated into Attachment 2R, FIDIC General Conditions, Clause 67, Settlement of Disputes; and provision for substituting the alternative UNCITRAL rules is contained in Attachment 2S, Conditions of Particular Application, Clause 67. USAID does not specify a general preference between the ICC rules and the UNCITRAL rules.

(3) The parties may also establish final settlement procedures other than those stated in (2) above, provided these procedures (a) specify the use of an established, impartial institution to administer arbitration in accordance with its rules; (b) permit non-nationals of the parties to the dispute to serve on the panel of arbitration and permit each party to select at least one arbitrator of its choice; and (c) permit conduct of the arbitration in a third country (which will be specified in the contract) if it is requested by one of the parties.

(4) Except for reasonable modifications in the time periods specified in the FIDIC clause and for contracts with host country firms, further modifications, including the establishment of ad hoc arbitration procedures, require USAID approval by the USAID Procurement Executive (with GC/CCM clearance) on a case-by-case basis.

i. Disposition of Personal Property in the Cooperating Country

Clause 81 in Attachment 2S regulates the disposition of personal property by contractor employees. (See Section 2.11.9.) This clause is mandatory for all host country contracts, both loan and grant funded, that provide an exemption of Cooperating Country import restrictions, customs duties, or taxes to employees posted in the Cooperating Country. It also applies to the employees' family members who are in the Cooperating Country as dependents under the contract. A violation of the rule will be treated as a breach of contract and be subject to appropriate remedies (but USAID does not have access to the remedy of ordering The violator's removal from the country).

j. Equal Employment Opportunity

Clause 82 in Attachment 2S requires that the Contractor will not discriminate in the recruitment or employment of personnel in the United States for the performance of the contract on the basis of race, color, religion, sex, or national origin. (See Section 2.11.10.) This clause is mandatory for all host country contracts with U.S. firms. It may be waived only by the USAID Administrator.

k. Audit and Records

Clause 83 in Attachment 2S requires the Contractor to maintain adequate books and records concerning transactions under or in connection with the contract, and to make them available for inspection and audit during the contract term and for a period of 3 years after final payment to insure compliance with the requirements of the contract. The clause must be included substantially as written in all contracts for construction services.

*1. Anti-Corruption Provisions (See Attachment 2S, Clause 84) A clause must be included which contains the DAC Anti-Corruption Provisions, substantially as specified in Attachment 2S. Clause 84.

4.7.2.3 Project Specific Clauses

Additional clauses may be added to Part II as appropriate in the circumstances. For example, a clause permitting termination for the convenience of the Employer may be included. Guaranties and warranties specific to the contract, as well as specific tests may be included to ensure that they are drafted in enforceable language and not hidden in the specifications.

4.8 Technical Specifications and Drawings

The Technical Specifications and Drawings should include, as appropriate:

- a. Detailed information on the work to be performed, including precise location of work, applicable standards and specifications and any other data required to define each work item with the precision needed for the bidder to estimate cost and the Employer or its Engineer to verify that the work has been done in the manner intended;
- b. Specifications for any permanent equipment to be furnished, erected, tested and put into operation, together with test procedures and criteria to be used;
- c. The drawings needed by the Contractor and a list of construction activities, covering items such as:
 - (1) Base lines and grades to use in construction;
 - (2) Storage areas;
 - (3) Access to construction site;
 - (4) Construction of temporary buildings;
 - (5) Protection of materials and work;
 - (6) Damage to existing structures, work or utilities;
 - (7) Preservation of existing vegetation;
 - (8) Possession of or use by the Contracting Agency of any completed or partially completed part of the work;
 - (9) Cleanup of the site during and after completion of construction;

(10) The handling of shop drawings; and

(11) Safety requirements and special precautions for hazardous, toxic, or radioactive materials and processes.

*d. Required scheduling of different work items, if work has to be coordinated with work assigned to another contractor, or if weather or other conditions require specific scheduling;

*e. Reporting requirements, if any, and

f. Specifications for civil engineering construction. These are often separated into Standard Specifications dealing with matters that are common to construction work such as compaction of embankments, mixes for various classes of concrete, procedures for placing and curing concrete, strengths for types of steel, etc. Many host governments have adopted Standard Specifications for highways and buildings and some governments for other kinds of civil works. Consulting engineers normally will incorporate these into the IFB. Otherwise, the consulting engineer will utilize a set of known Standard Specifications that are considered appropriate. The Special Provisions modify the Standard Specifications to suit the particular project and must be developed for each IFB.

*May alternatively be included in the conditions of contract.

Attachment 2A – Relevant USAID Geographic Codes

000 United States

899 Any area or country, except the cooperating country itself and the following foreign policy restricted countries: Libya, Cuba, Laos, Iraq, Iran, North Korea, and Syria.

935 Any area or country, including the cooperating country, but excluding the foreign policy restricted countries.

941 The United States and any independent country except 1. the cooperating country itself, 2. the foreign policy restricted countries, and 3. the following:

Europe		Other	
Albania	Lithuania	Angola	Kyrgyzstan
Andorra	Luxembourg	Australia	Mongolia
Armenia	Macedonia*	Bahamas	New Zealand
Austria	Malta	Bahrain	People's Republic of China
Azerbaijan	Moldova	Canada	Qatar
Belgium	Monaco	Cyprus	Saudi Arabia
Bosnia and Herzegovina	Montenegro*	Gabon	Singapore
Bulgaria	Netherlands	Hong Kong	South Africa
Belarus	Norway	Iceland	Taiwan*
Croatia	Poland	Japan	Tajikistan
Czech Republic	Portugal	Kazakhstan	Turkmenistan
Denmark	Romania	Kuwait	United Arab Emirates
Estonia	Russia	Uzbekistan	
Finland	San Marino		
France	Serbia*		
Georgia	Slovak Republic		
Germany	Slovenia		
Greece	Spain		
Hungary	Sweden		
Ireland	Switzerland		
Italy	Ukraine		
Latvia	United Kingdom		
Liechtenstein	Vatican City		

*Has the status of a "geopolitical entity," rather than an independent country.

Attachment 2B – Commerce Business Daily Notices: Preparation and Transmittal

1. Transmittal

Contracting agencies should submit synopses of proposed procurements through the USAID mission for transmission to USAID/W, M/OP/PS/SUP, by the most expeditious and reliable means available i.e., electronic memo, telegram, or telefax. Telefax No. is (202) 216-3395. When electronic transmission is not feasible, synopses should be sent by mail or other printed-copy delivery to:

U.S. Agency for International Development
M/OP/PS/SUP
Washington, D.C. 20523-7801

The Office of Small and Disadvantaged Business Utilization/Minority Resource Center (OSDBU) will review the synopses for conformance with small and disadvantaged business considerations, particularly the allocation of sufficient offeror response time.

Procurement schedules should normally establish the closing dates for receipt of bids, proposals, or prequalification questionnaires at least forty-five days after the anticipated date of synopsis publication in the Commerce Business Daily (CBD). In addition, nine business days should be allowed for OSDBU review and for CBD to publish synopses after their receipt.

OSDBU will contact the USAID mission to resolve any problems before sending the synopses to CBD. Early contact with OSDBU is advised to avoid delays when such problems are foreseen.

The synopses will be used, as appropriate, for listing the requirements in USAID publications that provide additional notice to prospective bidders.

2. General Format

The contracting agency should prepare the synopses in the following format:

A. General

Format for all synopses should employ conventional English language typing with abbreviations, capitalization, and punctuation all grammatically correct--to the extent that the means of transmission permits. Each synopsis should include all 17 format items. Do not include the title of the format item.

B. Length of Text

Overall length of the text of synopses should not exceed 12,000 characters, approximately 3.5 single-spaced pages.

C. Spacing

Begin each line flush with the left margin and separate each format item with a blank line. If more than one synopsis is sent in a single transmission, separate each synopsis with four blank lines and begin each new synopsis with format item number 1.

D. Abbreviations

Limit the use of abbreviations and acronyms to those commonly used by the general U.S. public. (NOTE: USAID will provide advice on accepted usage, as required.)

E. Standard Format

Prepare each synopsis in the following manner. Begin each format item with the number of the item followed by a period (e.g., 1.). Then leave two spaces after the period. Next type the appropriate information for each format item. Then conclude each format item (except the last one of the synopsis) with two exclamation points (i.e., !!). Conclude each complete synopsis, following format item 17, with five asterisks (i.e., *****). If the means of transmission does not permit complete conformance to this format, adhere to it to the extent possible and note items of non-conformance in explanatory footnotes, and the transmission will be reformatted in USAID/W for forwarding to CBD. (CAUTION: USE OF ASTERISKS IN SOME TELEGRAM SYSTEMS WILL DELETE TEXT; THIS REQUIREMENT SHOULD BE DISREGARDED IN SUCH CIRCUMSTANCES.)

FORMAT ITEM EXPLANATION/DESCRIPTION OF ENTRY

1. ACTION CODE--A single alphabetic letter denoting the specific action related in the synopsis. "P" = Presolicitation notice/procurement. "M" = Modification of a previously announced procurement action (a correction to a previous CBD announcement). "A" = Award announcement. "N/A" = Not applicable; it is to be used for notices of events (bidders conferences, etc.) that do not fit any of the preceding categories. (NOTE: CBD has discontinued the use of entry "F" for foreign procurement or tender.)
2. DATE--Date on which synopsis is transmitted for publication. Use a four digit number indicating month in two digits and date in two digits, in the U.S. style, with the month preceding the day (MMDD). All four spaces must be used--use a preceding "0" for months January through September (e.g., 0225 for February 25).
3. YEAR--Two numeric digits denoting the calendar year of the synopsis (e.g., 98 for 1998).
4. GOVERNMENT PRINTING OFFICE (GPO) BILLING ACCOUNT CODE. Host-country contracting agencies should use the code number assigned to USAID by the GPO. Enter: GPO471AID.
5. CONTRACTING AGENCY ZIP CODE--The geographic zip code for the contracting agency if a U.S. or APO/FPO address is specified. If an overseas address is specified, indicate "N/A". Up to nine numeric characters may be entered. When using a nine digit zip code, separate the first five digits and last four digits with a hyphen (e.g., 23456-1234).

6. CLASSIFICATION CODE--Service or supply code number. For construction, use "Y". For other classifications, consult Attachments 1M and 3C to this Country Contracting Handbook. Each synopsis should classify the services or supplies under one grouping. If the action is for a multiplicity of goods and/or services, the preparer should group the action under the category best defining the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by CBD.

7. CONTRACTING AGENCY ADDRESS--The complete name and mailing address of the contracting agency. The permissible length of this entry is open but is generally not expected to exceed 90 alpha-numeric characters. Failure to include a complete mailing address will result in rejection of the synopsis by CBD.

8. SUBJECT--Insert the classification code (must be the same as in Format Item 6 above) and a brief title description of the supplies being procured by the contracting agency. Code and description must be separated by a hyphen. This will appear in the CBD as the bold-faced title in the first line of the description.

9. PROPOSED SOLICITATION NUMBER--Contracting agency number for control, tracking, and identification. For solicitations; if not a solicitation, enter "N/A".

10. OPENING/CLOSING RESPONSE DATE--For solicitations; if not a solicitation, enter "N/A". Contracting agency deadline for receipt of bids, proposals, or responses. Use a six digit date, in the U.S. style, with the month preceding the date and then the year (MMDDYY). All six spaces must be used--use a preceding 0 for the first digit in the months January through September (e.g., 041598). Explanation may appear in text of synopsis in Format Item 17.

11. CONTACT POINT/CONTRACTING AGENCY--Include name and telephone number (with country and city codes, as necessary) of the contracting agency contact. Indicate if the telephone number is an international number (to avoid responders confusing country and city codes with U.S area codes). Also consider including the name and telephone number of a U.S. contact (in host country's embassy to U.S., OSDBU, or the cognizant USAID/W project development office, etc.) whom potential offerors may query for information regarding the procurement. (NOTE: Consult with USAID and the intended contact prior to designating a U.S. contact.) This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.

12. CONTRACT AWARD AND SOLICITATION NUMBER--For awards; if not an award, enter "N/A". The award, solicitation, and/or project number assigned by the contracting agency or USAID to provide a reference for bidders/subcontractors. Seventy-two character blocks are available for alpha-numeric entries plus slashes and dashes.

13. CONTRACT AWARD DOLLAR AMOUNT--For awards; if not an award, enter "N/A". Enter whole U.S dollars preceded by a "\$" sign (spell-out "U.S.

Dols" in telegrams) and/or local foreign currency, as applicable, with unit of foreign currency spelled-out.

14. CONTRACT LINE ITEM NUMBER--For awards as desired; if not an award, enter "N/A". The alpha-numeric field with dashes and slashes may not exceed 32 spaces. If sufficient space is not available enter "N/A" and insert the contract line item number(s) in Format Item 17.

15. CONTRACT AWARD DATE--For awards; if not an award, enter "N/A". A six-digit entry showing the date the award is made or the contract let, with the month preceding the date and then the year (MMDDYY). All six spaces must be used--use a preceding "0" for months January through September (e.g., 091598).

16. CONTRACTOR--For awards; if not an award, enter "N/A". Name and address of successful offeror. Ninety character spaces are allowed for full identification.

17. DESCRIPTION--This block is open-ended for entry of the substantive description of the contract action. Suggested sequence of content and items for inclusion in a solicitation synopsis are specified in Item 3, Format for Item 17, "Description" below. Do not enter classification code from Block 6. On award notices insert "N/A" or the contract line item number(s) if not listed in Item 14:

F. Non-Applicable Format Items

When a format item is not applicable, type the item number, a period, two blank spaces, and "N/A" (e.g., 10. N/A).

G. Rejection

CBD will reject synopses that are not in the proper format. Contracting agencies are cautioned to adhere to the format as closely as possible and to direct synopses to USAID/W so that elements of format that cannot be transmitted in international telegrams may be included and the synopses forwarded to CBD.

H. Illustrative Request to Publish a Solicitation Synopsis

SEC STATE, WASH., DC

ADM USAID

FOR USAID/OSDBU

SUB: SYNOPSIS FOR PUBLICATION IN COMMERCE BUSINESS DAILY

1. P!!

2. 0225!!

3. 98!!

4. GPO471AID!!
5. N/A!!
6. Y!!
7. Office of Contracts, Ministry of Water Resources, Government of Erewhon, Room 1776, 1824 Plaza d'Independence, Propowog, Erewhon!!
8. Y-Construction of Water Treatment Plant!!
9. MWR-IFB-98--1234!!
- 10.061598!!
11. (a) Juan Smith, MWR, Int'l Tel No. 98-2-34-56789, or (b) Mary Doe, Agency for International Development, OSDBU, Washington, DC 20523-1414, (703) 875-1551!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. The Ministry of Water Resources, Government of Erewhon, (Propowog, Erewhon) requests prequalification data from U.S. and other eligible country (Geographic Code 941) firms and joint ventures of such firms who can qualify, through experience with projects of similar magnitude, for construction services for a 10 mgd rapid sand filtration water treatment plant. Project consists of construction of a complete water treatment facility to be constructed in the City of Propowog, consisting of nonmechanical flocculation facilities, sedimentation basin, rapid sand filters utilizing local materials, clear well, final pumping plant and building. Anticipated construction period is November 1, 1998 through December 31, 2000. Estimated price of fixed-price contract is \$1 million to \$10 million. Payment will be made in U.S. and local currency. Financing will be under USAID Loan 123-4567. Prequalification questionnaires, plans and specifications, and additional information are available from above contacts. Deadline for submission of questionnaires is June 15, 1998. Late submissions will not be considered. If a joint venture seeks prequalification, information must be submitted for all firms in joint venture. Before submitting bids, prequalified firms will be required to examine work site. *****

3. Format for Item 17, "Description"

A. Prepare the synopsis to ensure that it includes a clear description of the professional or technical services to be contracted for, is not unnecessarily restrictive of competition, and will allow a prospective offeror to make an informed business judgment whether to request a copy of a solicitation or a prequalification questionnaire.

B. In order to assist USAID/W in locating synopses of contracting agency requirements that have been published in the CBD, one of the terms "USAID," "USAID," or "Agency for International Development" should be included in the text of Format Item 17.

C. Include the following elements, to the extent applicable, in sequence. Do not include the numeral designator preceding each element shown below or the supply/service classification code.

i. Name and location of construction service or project.

ii. Qualification requirements.

iii. Eligible source country code(s).

iv. Scope of services.

v. Estimated starting and completion dates.

vi. Type of contract.

vii. Broadly specified estimate of the cost range (NOT THE CONTRACTING AGENCY COST ESTIMATE).

viii. Currency in which payment will be made.

ix. USAID loan or grant number under which project will be financed.

x. Availability of plans, drawings, specifications, or other technical data if not distributed with the solicitation.

xi. Other special conditions that will assist the offeror in determining whether to pursue interest in procurement, e.g., policy on late submissions, etc.

D. Synopses of contract awards should include a statement of the industries, crafts, processes, or component items for which subcontractors are desired, when requested by the prime contractor.

4. Confirmation of Publication

USAID/W (Office of Procurement, Procurement Support Division) will confirm the date that the synopsis is published in the CBD by telegram to the USAID mission for forwarding to the contracting agency.

Attachment 2C – Prequalification Questionnaire for Construction Contractors

Part I - Authorization and Affidavits

It is understood and agreed that the following information is to be used by _____ (Contracting Agency) in determining, according to its sole judgment and discretion, the qualifications of prospective contractors to perform work in connection with the project described in the Notice. In consideration of submitting its qualifications as a prospective contractor for review, the undersigned waives any claim against the Contracting Agency that might arise with respect to its decision of a prospective contractor's qualifications. The decision of the Contracting Agency is final and not subject to appeal of any kind.

A prospective contractor will be considered qualified by the Contracting Agency only if it possesses reputation, ability, experience, qualified personnel, availability of equipment, and net current assets or working capital sufficient, in the judgment of the Contracting Agency, to complete the work and meet the contractual obligations, should the contract be awarded to it.

By signing this questionnaire, the prospective contractor guarantees the truth and accuracy of all statements made by it in this questionnaire.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank, depository, material or equipment manufacturer or distributor or any other person, firm, or corporation to furnish any pertinent information, requested by the Contracting Agency, to verify the information on this form or regarding the competence and general reputation of the prospective contractor.

The undersigned agrees to furnish any further qualifying information at the request of the Contracting Agency. Failure to complete this form adequately may result in disqualification.

The undersigned understands that the Agency for International Development (USAID), an agency of the United States of America, is providing financing in support of the project and that USAID has certain approval rights, including approval of the contractor selected and the contract. However, USAID is not a party to the contract.

Dated at _____, this _____ day of _____, 19____.

(Name of Organization)

By _____

(Title)

(if corporation, seal)

<p>If a corporation, answer this:</p> <p>Capital paid in cash \$ _____</p> <p>When incorporated _____</p> <p>Where incorporated _____</p> <p>President's name _____</p> <p>Vice President's name _____</p> <p>Secretary's name _____</p> <p>Treasurer's name _____</p>	<p>If partnership, answer this:</p> <p>Date of organization _____</p> <p>State whether partnership is general or limited: _____</p> <p>Name, Nationality & Address of Partners</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
---	---

(1) AFFIDAVIT FOR INDIVIDUAL

_____ being duly sworn, deposes, and says that:

a) the financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; b) he/she is a citizen of _____ or a legal resident of the United States; and c) all the following prequalification information is true, complete, and accurate.

(2) AFFIDAVIT FOR PARTNERSHIP

_____ being duly sworn, deposes and says that:

a) he/she is a member of the partnership of _____, b) he/she is familiar with the books of said partnership showing its financial condition; that the financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; c) the partnership is eligible in accordance with the nationality criteria established by the Agency for International Development, and d) all the following prequalification information is true, complete, and accurate.

(3) AFFIDAVIT FOR CORPORATION

A. _____ being duly sworn, deposes and says that he/she is _____ of _____ (Full Name of Corporation) _____ the he/she is familiar with the books of said corporation showing its financial condition; that the financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that all the following prequalification information is true, complete, and accurate.

B. _____ being duly sworn deposes and certifies that he/she is the Corporate Secretary of _____ (Full Name of Corporation) _____ and that the corporation is eligible in accordance with the nationality criteria established by the Agency for International Development.

_____ being duly sworn, deposes and says that he/she is _____ of _____ (Name of Contractor) _____ that he/she is duly

authorized to make the foregoing affidavit and that he/she makes it on behalf of () himself/herself; () said partnership; () said corporation.

Sworn to before me this _____ day of _____ 19____ in the county of _____ state of _____.

(Notary Public)

My commission expires _____

(Seal)

Part II - Experience/Past Performance Record

1. How long have you been in business as a contractor under your present business name?

2. How many years of experience in construction work has you organization had:
 - (a) As a general contractor _____
 - (b) As a subcontractor _____
3. What is the construction experience of the principal individuals of your organization?

Individual's Name	Present Position	Years of Construction Experience	Years With Firm	Magnitude and Type of Work	In What Capacity

4. Have you ever failed to complete any work awarded to you? _____
If so, where and why? _____

CONSTRUCTION

5. Performance Record for the past 2 years

(List all contracts completed by your organization during the past two years. Uncompleted contracts are to be shown on page 8	Was contract completed	Were there penalties imposed	Were there any liens or claims filed
---	------------------------	------------------------------	--------------------------------------

Owner Name	Name and Location of Project Work Type	Name of Engineer In Charge	Contract Price	on time (Yes or No)? (If "No," explain why under No. 6)	(Yes or No)? (If "Yes," give amount and explain under No. 6.)	against job (Yes or No)? (If "Yes," explain under No. 6.)

b. List at least three business references from the above performance record. Include those references where performance most clearly resembles the effort being contracted herein. The listing should include the name, address, and telephone or telex number of the appropriate employer contact person and the period of the services. If three references can not be furnished from the above, list business references from the employers listed in No. 7 or from other sources not otherwise listed. The intent is to verify the references given as part of the prequalification analysis.

6. Explanation of details in connection with noncompletion of contracts, penalties imposed, liens, and claims filed against contracts listed under No. 5:

7. STATUS OF CONTRACTS ON HAND

Give full information about all your uncompleted contracts, whether prime or subcontracts; whether in progress or awarded but not yet begun; or if you have bid but the contract has not yet been awarded.

Owner	Location	Description	Date Awarded	Contract \$ Amount	Percentage of Physical Completion	Scheduled Date of Completion	Estimated Date of Completion
				Total			

Part III - Financial Information

1. Attach a copy of the firm's two most recent annual financial statements.
2. Summary of Quick Assets and Liabilities as of _____ 19_____

Assets

- 1. Cash on hand \$ _____
- Cash on deposit \$ _____
- Cash elsewhere \$ _____
- _____
- Total cash \$ _____
- 2. Deposits with bids \$ _____
- 3. Due (from completed contracts)... \$ _____
- 4. Earned (uncompleted contracts)... \$ _____
- Retention (uncompleted contracts). \$ _____
- Earned but not billed (uncompleted contracts)\$ _____
- 5. Ordinary accounts receivable \$ _____
- 6. Stocks and bonds at present market value.. \$ _____
- Building and loan at present withdrawal value\$ _____
- Life insurance at cash surrender value (for an individual or partnership only)
- \$ _____
- 7. Other quick assets (due in 90 days)... \$ _____

Total \$ _____

Liabilities

1. Notes payable (all kinds) ...\$ _____

2. Accounts payable\$ _____

3. Other current liabilities ...\$ _____

Total current liabilities \$ _____

Net quick assets \$ _____

Total lines of credit \$ _____

TOTAL NET QUICK ASSETS \$ _____

Certified by _____
 (Chief Financial Officer or Independent Auditing Firm)

Date _____

3. Itemization of Quick Assets

Cash (I) On \$ _____

a. Cash (II) Deposited in banks named below \$ _____

Cash (III) Elsewhere -- (State where)..... \$ _____

Name of Bank _____ Location _____

Deposit in Name of _____ \$ Amount _____

Deposits with bids or otherwise as guarantees

b. (due within 90 days) \$ _____

Deposited with (Name and Address) _____ For What _____ When Recoverable _____ \$ Amount

Accounts receivable (i.e., due within 90 days) from completed contracts,

c. exclusive of claims not approved for payment .. \$ _____

Name and Address of Owner	Nature of Contract	Amount of Contract \$	\$ Amount Receivable

Have any of the above been assigned, sold, or pledged? _____
 If so, state amounts, to whom, and reason _____

Sum earned on uncompleted contracts as shown by Engineer's estimate _____

- d. (a) Amount receivable after deducting retention (due within 90 days) \$ _____
 (b) Retention to date due upon completion of Contract _____

Designation of Contract and Name and Address of Owner	Amount of Contract	Last Approved Estimate	Amount Previously Received	Date Due	Retention \$ Amount	Estimate Exclusive of Retention

Have any of the above been sold, assigned, or pledged? _____ If so, state amount, to whom, and reason _____.

- e. Accounts receivable not from construction contracts (due within 90 days) ... \$ _____

Receivable From: Name and Address	For What	When Due	\$ Amount

4. Itemization of Current Liabilities

- a. Notes Payable ((a) To banks, regular ... \$ _____
 ((b) To banks, for certified checks _____
 ((c) To others for equipment obligations _____
 ((d) To others exclusive of equipment obligations _____

To Whom: Name and Address	What Security	When Due	\$ Amount

- b. Accounts Payable ((a) Not past due \$ _____
 ((b) Past due _____

To Whom: Name and Address	For What	Date Payable	\$ Amount

- c. Other Liabilities \$ _____
 _____ Description _____ Amount _____

TOTAL CURRENT LIABILITIES \$ _____

Bank Credit Letter

(To be submitted only where needed to show financial capacity. Bank credit letters should be on bank letterhead.)

Name of Bank

Address

Date _____

Dear Sir:

A line of credit in the maximum amount of \$ _____ has been placed at the disposal of _____ for use when, as, and if needed for a period of _____ months.

The quick assets listed below have been pledged to secure the line of credit mentioned above:

The line of credit mentioned above has been given with full knowledge of accommodations extended by other banks in amounts as follows:

(Bank Officer Signature)

AFFIDAVIT

_____ being duly sworn, deposes and says that he/she is _____ of the _____ (Bank Name) Sworn to before me this _____ day of _____, 19 ____ in the county of _____, state of _____.

_____ My Commission expires _____.
(Notary Public) (Date)

(seal)

Attachment 2D – Example of a Letter to Firms Not Considered Qualified for the Project

(Insert name and address)

Dear M_____:

We have carefully reviewed all the prequalification data received from various firms in response to our announcement of the _____ project. We regret to advise that your firm was not one of those selected for the development of a bid. Thank you for your submission. We appreciate your interest in (insert _____ |
identity of project) and hope you will continue to be interested in projects of (Borrower/Grantee).

Sincerely,

Attachment 2E – Example of a Letter to Prequalified Firms

(Insert name and address)

Dear M_____:

We wish to inform you that your firm has been prequalified to bid on the _____ project. The Invitation for Bid is available from _____ at a cost of \$_____. The closing date for receipt of bids is _____, 19___. We appreciate your interest in the project.

Sincerely,

Attachment 2F – Public Voucher for Purchases and Services Other than Personal

11At1K01.tif Standard Form 1034

**Attachment 2G – OMB No. 0412-0017 Contractor's Certificate and
Agreement With the Agency for International Development
Contractor's Invoice-and-Contract Abstract**

11At1L01.tif OMB No. 0412-0017
(4 pages)

**Attachment 2H – Example of a Letter to Firms Who
Were Not Awarded the Contract**

(Insert name and address)

Dear M_____:

We wish to inform you that _____ (contractor) has been selected for the _____ project. We appreciate your interest in this project, and hope you will continue to be interested in the projects of (Borrower/Grantee) .

Very truly yours,

Attachment 2I – Sample Cover Letter Inviting Bids

_____, 19__

(Name of Firm)

Re: IFB No. _____

Gentlemen:

The (Contracting Agency) invites you to bid on its contract for construction of

_____.

Invitation for Bids No. _____ consists of the following documents:

- 1) Instructions to Bidders
- 2) Form of Tender
- 3) Bill of Quantities
- 4) Forms of Bid, Performance, and Payment Bonds*
- 5) Form of Agreement
- 6) Conditions of Contract, Parts I and II and
- 7) Technical Specifications and Drawings.

Enclosed are Volumes I and II of the IFB. Volume I of the IFB contains items 1-6 above. Volume II contains the Technical Specifications and Drawings.

We appreciate your interest in this project.

Sincerely yours,

*This should be modified if guaranties are used instead of bonds.

Attachment 2J – Sample Instructions to Bidders Invitation for Bids No. _____

ISSUED _____, 19__

(CONTRACTING AGENCY)

INSTRUCTIONS TO BIDDERS

1. Introduction

The (Contracting Agency), hereafter called the Employer, invites experienced firms of civil engineering contractors to submit bids for the construction of _____ KM of roads as part of the _____ project.

Only prequalified firms of civil engineering contractors invited by the Employer to submit bids for the execution of the Works described in these Documents may do so. Bidders will not be reimbursed for any costs incurred in connection with the preparation and submission of their bids or for any subsequent visits to the Employer's and/or the Engineer's offices prior to award of the Contract.

These Instructions to Bidders are intended to aid bidders in the preparation of their bids. The periods named in these Instructions to Bidders shall be consecutive calendar days, except that, if a due date falls on a local holiday, the due date will be the next workday.

2. Bid Opening

The original and four completed copies of Volume I must be delivered in person or sent by registered mail to the following address:

(Employer's Address)

All documents must be enclosed in sealed packages endorsed on the outside with the works "Bid for the _____ Project" and must be delivered not later than 12 noon local time on _____, 19__. The bids will be opened at that time at the address shown above in the presence of the public. Only the Bidder's name and the total Bid Prices will be announced.

3. Late Bids

Bidders will be held responsible for ensuring that their bids are received in accordance with the instructions stated herein and a late bid will not be considered even though it became late as a result of circumstances beyond the bidder's control. A late bid will be considered only if the sole cause of its becoming a late bid was attributable to the Employer, its employees or agents.

4. Modification of Bids

Any bidder has the right to withdraw, modify, or correct its bid after it has been delivered to the Employer, provided the request for such withdrawal, modification, or correction together

with full details of such modification or correction is received by the Employer at the address given above by letter, telegram, or telex before the time set for opening bids. The original bid as amended by such communication will be considered as the bidder's offer. The Employer may ask any bidder for a clarification of its bid. Clarifications which are not material modifications (as defined in Section 12) and do not change the bid price may be accepted. However, no bidder will be permitted to alter its bid price after bids have been opened. Bids must remain valid for days and may not be withdrawn except with the written permission of the Employer.

5. Contents of Bids

Bidders must submit bids for the whole of the works. Bids submitted for separate sections only or bids which are incomplete will not be considered.

Bidders are required to complete the following in an original and four copies:

- (a) Form of Tender and Appendix;
- (b) The Bill of Quantities.

Bidders shall fill in the rate for each item of work in the Bill of Quantities in the "Rate" column in figures. For each item, the quantity given in the "Quantity" column shall be multiplied by the rate, and the result entered in the "Amount" column. In any case of discrepancy between a rate and an amount, the rate will be taken as correct and the amount adjusted accordingly. Where in the "unit" column the word "Sum" is stated, the sum shall be entered in the "Amount" column by the bidder. Any item against which no rate or sum is quoted will not be paid for by the Employer when the work described therein is executed and it shall be deemed to be covered by other rates and sums in the Bill of Quantities. No alterations shall be made to the forms provided which shall be completed in indelible ink or typed print. The completed forms shall have no interlineations or erasures except those necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

One original copy of the completed bid is to be clearly marked "ORIGINAL BID" and the other completed copies of Volume I are to be marked "COPY OF BID." In case of any discrepancy, the copy marked "ORIGINAL BID" shall govern.

(c) Bid Bond

Bids must be accompanied by a bid bond in the amount of _____ percent of the bid price. No bid will be considered unless it is so secured.

The bid bond provided by unsuccessful bidders will not be repaid or discharged until the expiration of 150 days from the day of bid opening or until such earlier time as a bid shall have been accepted by the Employer and a Performance Bond shall have been duly provided by the bidder whose bid is accepted.

The bond provided by the bidder whose bid is accepted shall be discharged when the Performance Bond has been duly entered into and executed.

All correspondence in connection with the bid and the Contract is to be in the English language.

6. Signature of Bid

The Bid must be signed by one duly authorized to do so. A bid submitted by a corporation must bear the seal of the corporation and be attested by its Secretary. Associated companies or joint ventures shall jointly designate in one power-of-attorney persons authorized to obligate all the companies of the association or joint venture. A bid submitted by a joint venture must be accompanied by the document of formation of the joint venture, duly registered and authenticated by a Notary Public, in which is defined precisely the conditions under which it will function, its period of duration, the persons authorized to represent and obligate it, the participation of the several firms forming the joint venture, the principal member of the joint venture and address for correspondence for the joint venture. Bidders are advised that the joint venture agreement must include a clause stating that the members of the joint venture are severally and jointly bound.

7. Prebid Conference

A prebid conference will be held on _____, 19__, at (time) in the following location:

Bidders are not required to attend but are encouraged to do so. Modifications to the Invitation for Bids resulting from the conference will be provided to all bidders by means of an addendum to the Invitation for Bids.

8. Addenda to the Invitation for Bids

If for any reason prior to bid opening it becomes necessary to modify the Bid Documents, an Addendum will be issued to and be binding on all bidders. Receipt of all Addenda shall be acknowledged by bidders but non-acknowledgement of receipt shall not relieve the bidders of being bound by such Addenda provided the Addenda were communicated to bidders by telex or registered mail. Addenda will be numbered consecutively commencing with No. 1 and bidders are required to insert the appropriate numbers in the space provided on the Form of Tender.

Should any bidder have questions to ask or should it have any doubt about the meaning of the Bid Documents, it should refer them in writing to the Engineer (name and address) not later than ____ days before the date set for opening of bids.

9. Additional Information

The "Report of Soils Investigation," prepared by ABC, Inc., is available to bidders. This report is for background information only and will not form part of the Bid or the Contract. Bidders may inspect this report at the locations listed below, or may purchase the document by submitting _____ to the addresses below:

(Contracting Agency)

(Engineer)

(Embassy)

10. Site Visits

Visits to the site should be arranged through the Employer.

The Employer has available on the site a four-wheel drive vehicle, which can be made available to Bidders without charge by prior arrangement with the Employer, for visiting remote areas of the site. The bidder will however be responsible for providing the driver and will use the vehicle at bidder's own risk.

11. Currency and Payment

Bidders may quote prices in the Bill of Quantities either in U.S. dollars or in (local currency). The total bid price will be calculated by converting local currency to U.S. dollars at the rate quoted by the Central Bank of the host government on the date of bid opening.

Any fees to agents in the host country will be payable in local currency.

Dollar payments for items quoted in dollars in the Bill of Quantities will be paid under a Letter of Commitment issued through the U.S. Agency for International Development. Payment will be made by the Ministry of Finance for items quoted in local currency in the Bill of Quantities.

12. Acceptance of Bids

The contract will be awarded to the lowest responsive, responsible bidder. A "responsive" bid is one that complies with all the terms and conditions in the IFB without material modification. A material modification is one which affects in any way the price, quality, scope, or completion date of construction services or which limits in any way any responsibilities, duties, or liabilities of the bidder or any rights of the Employer or USAID as any of the foregoing have been specified or defined in the IFB. Bidders may not modify nonresponsive bids after bid opening in order to make them responsive. However, the Employer may request a bidder to clarify its bid as long as no material modification is made.

The Employer reserves the right to reject any or all bids and to waive minor informalities in the bids received if it appears in the Employer's best interests to do so.

Failure on the part of the successful bidder to provide a Performance Bond in accordance with the Conditions of Contract shall be sufficient grounds for the annulment of the award. The award may then be made to another bidder or the Employer may call for new bids.

All recipients of the Bid Documents (whether they submit a bid or not) shall treat the details of the Bid Documents as private and confidential.

The Bid of any bidder which does not conform to the foregoing instructions may be rejected.

***13. Anti-Corruption Provisions**

No offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of this contract. Any such practice will be grounds for cancelling the procurement, terminating an offeror's consideration for award, or terminating the award of the contract and for such other additional actions, civil and/or criminal, as may be applicable.

Attachment 2K – Sample Form of Tender

(Note: The Appendix forms part of the bid.)

To:

Gentlemen,

* 1. Having examined the Drawings, Conditions of Contract, Specifications, and Bill of Quantities for the execution of the Works, we, the undersigned, offer to execute, complete, and maintain the whole of the said Works in conformity with the Drawings, Conditions of Contract, Specifications, and Bill of Quantities for the sum of

_____ (\$ _____).

2. We undertake, if our Bid is accepted, to commence work under the contract within _____ *days of receipt of both the confirmation that the Letter of Credit has been opened and the Notice to Proceed from the Engineer, and to complete and deliver the whole of the of the Works comprised in the Contract within _____ *days calculated from the last day of the aforesaid period in which the work is to commence.

3. If our bid is accepted we will, if required, obtain the guaranty of an Insurance Company or Bank or other sureties (to be approved by you) to be jointly and severally bound with us in a sum not exceeding _____ * per cent of the above-named sum for the due performance of the Contract under the terms of a Bond to be approved by you.

4. We certify that we are not included on any list of suspended, debarred, or ineligible bidders used by USAID.

5. (Applicable only if the Bidder is incorporated or legally organized in the United States.) We certify that we are in compliance with our equal opportunity obligation under Executive Order 11246, as amended, and regulations and orders issued thereunder.

6. We certify that we meet the nationality requirements set forth in the clause of the contract entitled "Nationality, Source, and Cargo Preference."

7. We agree to abide by this Bid for the period of _____ * days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

*To be completed by the Employer prior to distribution of the IFB.

8. Unless and until a formal Agreement is prepared and executed, this Bid, together with you written acceptance thereof, shall constitute a binding Contract between us.

9. We understand that you are not bound to accept the lowest or any bid you may receive.

10. We acknowledge receipt of Addenda 1 through _____ to the Invitation for Bids as originally issued.

Appendix *

Amount of Bond or Guarantee (if any) 10 ** _____%

Minimum Amount of Third Party Insurance 23 (2) _____

Period for commencement of work on site from Engineer's order to commence
41 _____ days

Time of Completion 43 _____ days

Amount of Liquidated Damages 47 (1) _____

Limit of Liquidated Damages 47 (3) _____

Amount of Bonus (if any) 47 (3) _____

Period of Maintenance 49 _____ days

Percentage for Adjustment of Provisional Sums 59 (4)(c) ___ per cent

Percentage of Retention 60 (8) ___ per cent

Limit of Retention Money 60 (8) _____

Minimum Amount of Interim Certificates 60 (6) _____

Time within which payment to be made after Certificate 60 (6) _____ days

Dated this _____ day of _____ 19__.

Signature _____ in the capacity of _____

duly authorized to sign bids for and on behalf of _____

(IN BLOCK CAPITALS)

Witness _____ Address _____

Address _____

Occupation _____

*To be completed by the Employer prior to distribution of the IFB.

**Reference to Provision number in Conditions of Contract.

Attachment 2L –Bill of Quantities

Sample Preamble

1. The quantities set forth in the Bill of Quantities are believed to represent the character of the work to be carried out and are given for the purpose of enabling the Employer to compare Tenders on an equal basis. There is no guarantee to the Contractor that it will be required to carry out the quantities of work indicated under any one particular Item or group of Items in the Bill of Quantities, although in the Contract as a whole the quantities are believed to represent the overall value of the work to be carried out.

2. The prices and rates inserted in the Bill of Quantities will be used for valuing the work executed and the Engineer will measure the whole of the works executed in accordance with this Contract.

3. The prices and rates inserted in the Bill of Quantities are to be the full inclusive costs of the Works described under the Items, complete in place and in accordance with the Specifications, including all costs and expenses which may be required in and for the construction of the works described, together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based.

4. The brief description of the Items given in the Bill of Quantities are purely for the purpose of identification and in no way modify or supersede the detailed descriptions given in the Conditions of Contract or Specifications. When pricing Items, reference is to be made to the Conditions of Contract and Specifications for the full directions and descriptions of work and materials.

Bill of Quantities

11At2L01.tif

BILL OF QUANTITIES

Sample Schedule of Major Plant and Equipment

The bidder shall list the items of plant it proposes to have on the Site, together with the hourly rate applicable to each item listed. The rate stated shall include all operating and maintenance costs, including all fuels and lubricants, spare parts, repairs, insurance, overhead and profit. Plant rates shall not be paid for periods of breakdown of plant.

Item	Make	Model and Year	Hourly Rate

Attachment 2M – Bid Bond

11At2M01.tif BID BOND
(2 pages)

Attachment 2N – Performance Bond

11At2N01.tif

PERFORMANCE BOND [IMAGE]
(2 pages)

**Attachment 20 – Supplier's Certificate and Agreement With the
Agency for International Development for Project
Commodities/invoice and Contract Abstract**

11At1S01.tif OMB No. 0412-0020 [IMAGE]
Supplier's Certificate and Agreement
With the Agency for International Development
for Project Commodities/invoice and Contract Abstract
(4 pages)

Attachment 2P – Payment Bond

11At2P01.tif

PAYMENT BOND [IMAGE]
(2 pages)

Attachment 2Q – Sample Form of Agreement

THIS AGREEMENT is made the ____ day of _____ 19__ between _____ (hereinafter called "the Employer") and _____ (hereinafter called "the Contractor"). The Employer has accepted a Bid by the Contractor for the execution, completion, and maintenance of _____ Works as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and constructed as part of this Agreement, viz.:
 - (a) The Form of Tender (including the Appendix).
 - (b) The Drawings.
 - (c) The Conditions of Contract (Parts I and II).
 - (d) The Specifications.
 - (e) The Bill of Quantities.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute, complete, and maintain the Works in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution, completion, and maintenance of the Works the Contract Price at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused their respective Seals to be affixed (or have set their respective hands and seals) the day and year first above written.

CONTRACTOR		EMPLOYER
(Signature)		(Signature)
(Typed Name)		(Typed Name)
(Title)		(Title)
(Date)		(Date)

Attachment 2R – FIDIC Conditions of Contract for Work of Civil Engineering Construction

Preface

PART I GENERAL CONDITIONS

FOURTH EDITION 1987

First published by
Federation Internationale des Ingenieurs-Conseils (FIDIC)
PO Box 86
CH 1000 Lausanne
12-Chailly
Switzerland
Telex 24698

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Produced for FIDIC by Rhys Jones Consultants, London, UK.

NOTE: This reproduction was authorized by FIDIC, January 17, 1990.

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TENDER
CONTRACT AGREEMENT

PART I - GENERAL CONDITIONS

Definitions and Interpretation

Definitions

1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- (a)
 - (i) "Employer" means the person named as such in Part II of these Conditions and the legal successors in title to such person, but not (except with the consent of the Contractor) any assignee of such person.
 - (ii) "Contractor" means the person whose tender has been accepted by the Employer and the legal successors in title to such person, but not (except with the consent of the Employer) any assignee of such person.
 - (iii) "Subcontractor" means any person named in the Contract as a Subcontractor for a part of the Works or any person to whom a part of the Works has been subcontracted with the consent of the Engineer and the legal successors in title to such person, but not any assignee of any such person.
 - (iv) "Engineer" means the person appointed by the Employer to act as Engineer for the purpose of the Contract and named as such in Part II of these Conditions.
 - (v) "Engineer's Representative" means a person appointed from time to time by the Engineer under Sub-Clause 2.2.
- (b)
 - (i) "Contract" means these Conditions (Parts I and II), the Specification, the Drawings, the Bill of Quantities, the Tender, the Letter of Acceptance, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).
 - (ii) "Specification" means the specification of the Works included in the Contract and any modification thereof or addition thereto made under Clause 51 or submitted by the Contractor and approved by the Engineer.
 - (iii) "Drawings" means all drawings, calculations and technical information of a like nature provided by the Engineer to the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.
 - (iv) "Bill of Quantities" means the priced and completed bill of quantities forming part of the Tender.

- (v) "Tender" means the Contractor's priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.
- (vi) "Letter of Acceptance" means the formal acceptance by the Employer of the Tender.
- (vii) "Contract Agreement" means the contract agreement (if any) referred to in Sub-Clause 9.1.
- (viii) "Appendix to Tender" means the appendix comprised in the form of Tender annexed to these Conditions.
- (c) (i) "Commencement Date" means the date upon which the Contractor receives the notice to commence issued by the Engineer pursuant to Clause 41.
- (ii) "Time for Completion" means the time for completing the execution of and passing the Tests on Completion of the Works or any Section or part thereof as stated in the Contract (or as extended under Clause 44) calculated from the Commencement Date.
- (d) (i) "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor which are to be made by the Contractor before the Works or any Section or part thereof are taken over by the Employer.
- (ii) "Taking-Over Certificate" means a certificate issued pursuant to Clause 48.
- (e) (i) "Contract Price" means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract.
- (ii) "Retention Money" means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 60.2(a).
- (f) (i) "Works" means the Permanent Works and the Temporary Works on either of them as appropriate.
- (ii) "Permanent Works" means the permanent works to be executed (including Plant) in accordance with the Contract.
- (iii) "Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
- (iv) "Plant" means machinery, apparatus and the like intended to form or forming part of the Permanent Works.

(v) "Contractor's Equipment" means all appliances and things of whatsoever nature (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of the Permanent Works.

(vi) "Section" means a part of the Works specifically identified in the Contract as a Section.

(vii) "Site" means the places provided by the Employer where the Works are to be executed and any other places as may be specifically designated in the Contract as forming part of the Site.

(g) (i) "cost" means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but does not include any allowance for profit.

(ii) "day" means calendar day.

(iii) "foreign currency" means a currency of a country other than that in which the Works are to be located.

(iv) "writing" means any hand-written, type-written, or printed communication, including telex, cable and facsimile transmission.

Headings and Marginal Notes

1.2 The headings and marginal notes in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

Interpretation

1.3 Words importing persons or parties shall include firms and corporations and any organization having legal capacity.

Singular and Plural

1.4 Words importing the singular only also include the plural and vice versa where the context requires.

Notices, Consents, Approvals, Certificates and Determinations

1.5 Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "certify" or "determine" shall be construed accordingly. Any such consent, approval, certificate or determination shall not unreasonably be withheld or delayed.

Engineer's Duties and Authority

2.1 (a) The Engineer shall carry out the duties specified in the Contract.

(b) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract, provided, however, that if the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising any such authority, particulars of such requirements shall be set out in Part II of these Conditions. Provided further that any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

(c) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

Engineer's Representative

2.2 The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.

Engineer's Authority to Delegate

2.3 The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Employer and the Contractor.

Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. Provided that:

(a) any failure of the Engineer's Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof;

(b) if the Contractor questions any communication of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

Appointment of Assistants

2.4 The Engineer or the Engineer's Representative may appoint any number of persons to assist the Engineer's Representative in the carrying out of his duties under Sub-Clause 2.2. He shall notify to the Contractor the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, Plant or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer's Representative.

Instructions in Writing

2.5 Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply

with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days, confirms in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within 7 days by the Engineer, it shall be deemed to be an instruction of the Engineer.

The provisions of this Sub-Clause shall equally apply to instructions given by the Engineer's Representative and any assistants of the Engineer or the Engineer's Representative appointed pursuant to Sub-Clause 2.4.

Engineer to Act Impartially

2.6 Wherever, under the Contract, the Engineer is required to exercise his discretion by:

- (a) giving his decision, opinion or consent, or
- (b) expressing his satisfaction or approval, or
- (c) determining value, or
- (d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause 67.

Assignment and Subcontracting

Assignment of Contract

3.1 The Contractor shall not, without the prior consent of the Employer (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the Employer), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by:

- (a) a charge in favor of the Contractor's bankers of any monies due or to become due under the Contract, or
- (b) assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

Subcontracting

4.1 The Contractor shall not subcontract the whole of the Works. Except when otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workman as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

- (a) the provision of labor, or
- (b) the purchase of materials which are in accordance with the standards specified in the Contract, or
- (c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

Assignment of Subcontractors' Obligations

4.2 In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

Contract Documents

Language/s and Law

5.1 There is stated in Part II of these Conditions:

- (a) the language or languages in which the Contract documents shall be drawn up and
- (b) the country or state the law of which shall apply to the Contract and according to which the Contract shall be construed.

If the said documents are written in more than one language, the language according to which the Contract shall be construed and interpreted is also stated in Part II of these Conditions, being therein designated the "Ruling Language".

Priority of Contract Documents

5.2 The several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:

- (1) The Contract Agreement (if completed);
- (2) The Letter of Acceptance;
- (3) The Tender;
- (4) Part II of these Conditions;

- (5) Part I of these Conditions; and
- (6) Any other document forming part of the Contract.

Custody and Supply of Drawings and Documents

6.1 The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be provided to the Contractor free of charge. The Contractor shall make at his own cost any further copies required by him. Unless it is strictly necessary for the purposes of the Contract, the Drawings, Specification and other documents provided by the employer or the Engineer shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor. Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer all Drawings, Specification and other documents provided under the Contract.

The Contractor shall supply to the Engineer four copies of all Drawings, Specification and other documents submitted by the Contractor and approved by the Engineer in accordance with Clause 7, together with a reproducible copy of any material which cannot be reproduced to an equal standard by photocopying. In addition the Contractor shall supply such further copies of such Drawings, Specification and other documents as the Engineer may request in writing for the use of the Employer, who shall pay the cost thereof.

One Copy of Drawings to be Kept on Site

6.2 One copy of the Drawings, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized by the Engineer in writing.

Disruption of Progress

6.3 The Contractor shall give notice to the Engineer, with a copy to the Employer, whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

Delays and Cost of Delay of Drawings

6.4 If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-Clause 6.3, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Failure by Contractor to Submit Drawings

6.5 If the failure or inability of the Engineer to issue any drawings or instructions is caused in whole or in part by the failure of the Contractor to submit Drawings, Specification or other documents which he is required to submit under the Contract, the Engineer shall take such failure by the Contractor into account when making his determination pursuant to Sub-Clause 6.4.

Supplementary Drawings and Instructions

7.1 The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. The Contractor shall carry out and be bound by the same.

Permanent Works Designed by Contractor

7.2 Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer, for approval:

- (a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and
- (b) operation and maintenance manuals together with drawings of the Permanent Works as completed, in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design. The Works shall not be considered to be completed for the purposes of taking over in accordance with Clause 48 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer.

Responsibility Unaffected by Approval

7.3 Approval by the Engineer, in accordance with Sub-Clause 7.2, shall not relieve the Contractor of any of his responsibilities under the Contract.

General Obligations

Contractor's General Responsibilities

8.1 The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labor, materials, Plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

Site Operations and Methods of Construction

8.2 The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise agreed) for the design or specification of Permanent Works, or for the design or specification of any Temporary Works not prepared by

the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.

Contract Agreement

9.1 The Contractor shall, if called upon so to do, enter into and execute the Contract Agreement, to be prepared and completed at the cost of the Employer, in the form annexed to these Conditions with such modification as may be necessary.

Performance Security

10.1 If the Contract requires the Contractor to obtain security for his proper performance of the Contract he shall obtain and provide to the Employer such security within 28 days after the receipt of the Letter of Acceptance, in the sum stated in the Appendix to Tender. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing. Such security shall be in such form as may be agreed between the Employer and the Contractor. The institution providing such security shall be subject to the approval of the Employer. The cost of complying with the requirements of this Clause shall be borne by the Contractor, unless the Contract otherwise provides.

Period of Validity of Performance Security

10.2 The performance security shall be valid until the Contractor has executed and completed the Works and remedied any defects therein in accordance with the Contract. No claim shall be made against such security after the issue of the Defects Liability Certificate in accordance with Sub-Clause 62.1 and such security shall be returned to the Contractor within 14 days of the issue of the said Defects Liability Certificate.

Claims under Performance Security

10.3 Prior to making a claim under the performance security the Employer shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.

Inspection of Site

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

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself (so far as is practicable, having regard to considerations of cost and time) before submitting his Tender, as to:

- (a) the form and nature thereof, including the sub-surface conditions,
- (b) the hydrological and climatic conditions,

(c) the extent and nature of work and materials necessary for the execution and completion of the Works and the remedying of any defects therein, and

(d) the means of access to the Site and the accommodation he may require and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender.

The Contractor shall be deemed to have based his Tender on the data made available by the Employer and on his own inspection and examination, all as aforementioned.

Sufficiency of Tender

12.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect of the supply of goods, materials, Plant or services or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.

Adverse Physical Obstructions or Conditions

12.2 If, however, during the execution of the Works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the Employer. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the Employer and the Contractor, determine:

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

(b) the amount of any costs which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer. Such determination shall take account of any instruction which the Engineer may issue to the Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer which the Contractor may take in the absence of specific instructions from the Engineer.

Work to be in Accordance with Contract

13.1 Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer. The Contractor shall comply with and adhere strictly to the Engineer's instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer or, subject to the provisions of Clause 2, from the Engineer's Representative.

Program to be Submitted

14.1 The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of Acceptance, submit to the Engineer for his consent a program, in such form and detail as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

Revised Program

14.2 If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the program to which consent has been given under Sub-Clause 14.1, the Contractor shall produce, at the request of the Engineer, a revised program showing the modifications to such program necessary to ensure completion of the Works within the Time for Completion.

Cash Flow Estimate to be Submitted

14.3 The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of Acceptance, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.

Contractor not Relieved of Duties or Responsibilities

14.4 The submission to and consent by the Engineer of such programs or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

Contractor's Superintendence

15.1 The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorized representative approved of by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorized representative shall receive, on behalf of the Contractor, instructions from the Engineer or, subject to the provisions of Clause 2, the Engineer's Representative.

If approval of the representative is withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving notice of such withdrawal, remove the representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

Contractor's Employees

16.1 The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein.

- (a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works, and
- (b) such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

Engineer at Liberty to Object

16.2 The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.

Setting-out

17.1 The Contractor shall be responsible for:

- (a) the accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing.
- (b) the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works, and
- (c) the provision of all necessary instruments, appliances and labor in connection with the foregoing responsibilities.

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in which case the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor or his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

Boreholes and Exploratory Excavation

18.1 If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause 51, unless an item or a Provisional Sum in respect of such work is included in the Bill of Quantities.

Safety, Security and Protection of the Environment

19.1 The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons, and
- (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
- (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

Employer's Responsibilities

19.2 If under Clause 31 the Employer shall carry out work on the Site with his own workmen he shall, in respect of such work:

- (a) have full regard to the safety of all persons entitled to be upon the Site, and
- (b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31 the Employer shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

Care of Works

20.1 The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, when the responsibility for the said care shall pass to the Employer. Provided that:

- (a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the Employer, and
- (b) the Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.

Responsibility to Rectify Loss or Damage

20.2 If any loss or damage happens to the Works, or any part thereof, or materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care

thereof, from any cause whatsoever, other than the risks defined in Sub-Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

Loss or Damage Due to Employer's Risks

20.3 In any event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer. In the case of a combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

Employer's Risks

20.4 The Employer's risks are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works,
- (f) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible,
- (g) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible,
- (h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

Insurance of Works and Contractor's Equipment

21.1 The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure:

- (a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost
- (b) an additional sum of 15 per cent of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature
- (c) the Contractor's Equipment and other things brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

Scope of Cover

21.2 The insurance in paragraphs (a) and (b) of Sub-Clause 21.1 shall be in the joint names of the Contractor and the Employer and shall cover:

- (a) the Employer and the Contractor against all loss or damage from whatsoever cause arising, other than as provided in Sub-Clause 21.4, from the start of work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and
- (b) the Contractor for his liability:
 - (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, and
 - (ii) for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

Responsibility for Amounts not Recovered

21.3 Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause 20.

Exclusions

21.4 There shall be no obligation for the insurance in Sub-Clause 21.1 to include loss or damage caused by

- (a) war, hostilities (where war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

Damage to Persons and Property

22.1 The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

- (a) death of or injury to any person, or
- (b) loss of or damage to any property (other than the Works), which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause 22.2.

Exceptions

22.2 The "exceptions" referred to in Sub-Clause 22.1 are:

- (a) the permanent use or occupation of land by the Works, or any part thereof,
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract,
- (d) death of or injury to persons or loss or damage to property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage.

Indemnity by Employer

22.3 The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause 22.2.

Third Party Insurance (including Employer's Property)

23.1 The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 22, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as provided in Clause 24) or loss of or damage to any property (other than as provided in Clause 24) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract, other than the exceptions defined in paragraphs (a), (b) and (c) of Sub-Clause 22.2.

Minimum Amount of Insurance

23.2 Such insurance shall be for at least the amount stated in the Appendix to Tender.

Cross Liabilities

23.3 The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insurees.

Accident or Injury to Workmen

24.1 The Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor, other than death or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer is liable as aforesaid, against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Insurance Against Accident to Workmen

24.2 The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.

Evidence and Terms of Insurance

25.1 The Contractor shall provide evidence to the Employer prior to the start of work at the site that the insurance required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurance for which he is responsible with insurers and in terms approved by the Employer.

Adequacy of Insurance

25.2 The Contractor shall notify the insurers of changes in the nature, extent or program for the execution of the Works and ensure the adequacy of the insurance at all times in accordance with the terms of the Contract and shall, when required, produce to the Employer the insurance policies in force and the receipts for payment of the current premiums.

Remedy on Contractor's Failure to Insure

25.3 If the Contractor fails to effect and keep in force any of the insurance required under the Contract, or fails to provide the policies to the Employer within the period required by Sub-Clause 25.1, then and in any such case the Employer may effect and keep in force any such insurance and pay any premium as may be necessary for that purpose and from time to time

deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

Compliance with Policy Conditions

25.4 In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.

Compliance with Statutes, Regulations

26.1 The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:

(a) any National or State Statute, Ordinance, or other Law, or any regulation, or by-law of any local or other duly constituted authority in relation to the execution and completion of the Works and the remedying of any defects therein, and

(b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works, and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.

Fossils

27.1 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

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

(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Patent Rights

28.1 The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.

Royalties

28.2 Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.

Interference with Traffic and Adjoining Properties

29.1 All operations necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.

The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Contractor is responsible therefor.

Avoidance of Damage to Roads

30.1 The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors, and in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

Transport of Contractor's Equipment or Temporary Works

30.2 Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claim for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

Transport of Materials or Plant

30.3 If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the hauler of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall

negotiate the settlement of and pay all sums due in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from any monies due or to become due to the Contractor and the engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.

Waterborne Traffic

30.4 Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "road" included a lock, dock, sea wall or other structure related to waterway and "vehicle" included craft, and shall have effect accordingly.

Opportunities for Other Contractors

31.1 The Contractor shall, in accordance with the requirements of the Engineer afford all reasonable opportunities for carrying out their work to:

- (a) any other contractors employed by the Employer and their workmen.
- (b) the workmen of the Employer, and
- (c) the workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

Facilities for Other Contractors

31.2 If, however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer:

- (a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor responsible, or
- (b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site, or
- (c) provide any other service of whatsoever nature for any such, the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Keep Site Clear

32.1 During the execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment and

surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

Clearance of Site on Completion

33.1 Upon the issue of any Taking-Over Certificate the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

Labor

Engagement of Staff and Labor

34.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labor, local or other, and for their payment, housing, feeding and transport.

Returns of Labor and Contractor's Equipment

35.1 The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labor from time to time employed by the Contractor on the Site and such information respecting Contractor's Equipment as the Engineer may require.

Materials, Plant and Workmanship

Quality of Materials, Plant and Workmanship

36.1 All materials, Plant and workmanship shall be

- (a) of the respective kinds described in the Contract and in accordance with the Engineer's instructions, and
- (b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

The Contractor shall provide such assistance, labor, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or Plant and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Engineer.

Cost of Samples

36.2 All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract.

Costs of Tests

36.3 The cost of making any test shall be borne by the Contractor if such test is

- (a) clearly intended by or provided for in the Contract, or
- (b) particularized in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfill in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

Cost of Tests not Provided for

36.4 If any test required by the Engineer which is

- (a) not so intended by or provided for, or
- (b) (in the cases above mentioned) not so particularized, or
- (c) (though so intended or provided for) required by the Engineer to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials or Plant tested, shows the materials, Plant or workmanship not to be in accordance with the provisions of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub-Clause 36.5 shall apply.

Engineer's Determination where tests not Provided for

36.5 Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Inspection of Operations

37.1 The Engineer, and any person authorized by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

Inspection and Testing

37.2 The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.

Dates for Inspection and Testing

37.3 The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorized representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate.

Rejection

37.4 If, at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the Engineer so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Independent Inspection

37.5 The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub-Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.

Examination of Work before Covering up

38.1 No part of the Works shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works or foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.

Uncovering and Making Openings

38.2 The Contractor shall uncover any part of the Works or make openings in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the

requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect of such of uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer. In any other case all costs shall be borne by the Contractor.

Removal of Improper Work, Materials or Plant

39.1 The Engineer shall have authority to issue instructions from time to time, for:

- (a) the removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not in accordance with the Contract,
- (b) the substitution of proper and suitable materials or Plant, and
- (c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of
 - (i) materials, Plant or workmanship, or
 - (ii) design by the Contractor or for which he is responsible, is not, in the opinion of the Engineer, in accordance with the Contract.

Default of Contractor in Compliance

39.2 In case of default on the part of the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Suspension

Suspension of Work

40.1 The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is

- (a) otherwise provided for in the Contract, or
- (b) necessary by reason of some default or of breach of contract by the Contractor or for which he is responsible, or
- (c) necessary by reason of climatic conditions on the Site, or

(d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof (save to the extent that such necessity arises from any act of default by the Engineer or the Employer or from any of the risks defined in Sub-Clause 20.4), Sub-Clause 40.2 shall apply.

Engineer's Determination following Suspension

40.2 Where, pursuant to Sub-Clause 40.1, this Sub-Clause applies the Engineer shall, after due consultation with the Employer and the Contractor, determine

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

(b) the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension,

and shall notify the Contractor accordingly, with a copy to the Employer.

Suspension lasting more than 84 Days

40.3 If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause 40.1, the Contractor may give notice to the Engineer requiring permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 51 by giving a further notice to the Engineer to that effect, or, where it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Sub-Clause 69.1, whereupon the provisions of Sub-Clauses 69.2 and 69.3 shall apply.

Commencement and Delays

Commencement of Works

41.1 The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Engineer, which notice shall be issued within the time stated in the Appendix to Tender after the date of the Letter of Acceptance. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

Possession of Site and Access Thereto

42.1 Save insofar as the Contract may prescribe:

(a) the extent of portions of the Site of which the Contractor is to be given possession from time to time, and

(b) the order in which such portions shall be made available to the Contractor and subject to any requirement in the Contract as to the order in which the Works shall be

executed, the Employer will, with the Engineer's notice to commence the Works, give to the Contractor possession of

(c) so much of the Site, and

(d) such access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the program referred to in Clause 14, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer with a copy to the Employer, make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such program or proposals, as the case may be.

Failure to Give Possession

42.2 If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

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

(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Wayleaves and Facilities

42.3 The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works.

Time for Completion

43.1 The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause 48, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.

Extension of Time for Completion

44.1 In the event of

(a) the amount or nature of extra or additional work, or

(b) any cause of delay referred to in these Conditions, or

(c) exceptionally adverse climatic conditions, or

(d) any delay, impediment or prevention by the Employer, or

(e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible, being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Provide Notification and Detailed Particulars

44.2 Provided that the Engineer is not bound to make any determination unless the Contractor has

(a) within 28 days after such event has first arisen notified the Engineer with a copy to the Employer, and

(b) within 27 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

Interim Determination of Extension

44.3 Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2(b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and, on receipt of the final particulars, the Engineer shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases the Engineer shall notify the Contractor accordingly, with a copy to the Employer. No final review shall result in a decrease of any extension of time already determined by the Engineer.

Restriction on Working Hours

45.1 Subject to any provision to the contrary contained in the Contract, none of the Works shall, save as hereinafter provided, be carried on during the night or on locally recognized days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shifts.

Rate of Progress

46.1 If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to

comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognized days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Employer in additional supervision costs, such costs shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Liquidated Damages for Delay

47.1 If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section subject to the applicable limit stated in the Appendix to Tender. The Employer may, without prejudice to any other method of recover, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

Reduction of Liquidated Damages

47.2 If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Work or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damage and shall not affect the limit thereof.

Taking-Over Certificate

48.1 When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the

Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within 21 days of completion, to the satisfaction of the Engineer, of the Works to specified and remedying any defects so notified.

Taking Over of Sections or Parts

48.2 Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of:

- (a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender, or
- (b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- (c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

Substantial Completion of Parts

48.3 If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period.

Surfaces Requiring Reinstatement

48.4 Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.

Defects Liability

Defects Liability Period

49.1 In these Conditions the expression "Defects Liability Period" shall mean the defects liability period named in the Appendix to Tender, calculated from:

- (a) the date of substantial completion of the Works certified by the Engineer in accordance with Clause 48, or
- (b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified and in relation to the Defects Liability Period the expression "the Works" shall be construed accordingly.

Completion of Outstanding Work and Remedying Defects

49.2 To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer the Contractor shall:

- (a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date and
- (b) execute all such work of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

Cost of Remedying Defects

49.3 All work referred to in Sub-Clause 49.2(b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:

- (a) the use of materials, Plant or workmanship not in accordance with the Contract, or
- (b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or
- (c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor's Failure to Carry Out Instructions

49.4 In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same if such work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Search

50.1 If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the Employer, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added

to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.

Alterations, Additions and Omissions

Variations

51.1 The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),
- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, positions and dimensions of any part of the Works,
- (e) execute additional work of any kind necessary for the completion of the Works,
- (f) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

Instructions for Variations

51.2 The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

Valuation of Variations

52.1 All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as "varied work"), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed

upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Power of Engineer to Fix Rates

52.2 Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the Employer and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Provided also that no varied work instructed to be done by the Engineer pursuant to Clause 51 shall be valued under Sub-Clause 52.1 or under this Sub-Clause unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

- (a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or
- (b) by the Engineer to the Contractor of his intention to vary a rate or price.

Variations Exceeding 15 per cent

52.3 If, on the issue of the Taking-Over Certificate for the whole of the Works, it is found that as a result of:

- (a) all varied work valued under Sub-Clause 52.1 and 52.2, and
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sums, dayworks and adjustments of price made under Clause 70, but not from any other cause, there have been additions to or deductions from the Contract Price which taken together are in excess in 15 per cent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price, excluding Provisional Sums and allowance for dayworks, in any) then and in such event (subject to any action already taken under any other Sub-Clause of this Clause), after due consultation by the Engineer with the Employer and the Contractor, there shall be added to or deducted from the Contract Price such further sum as may be agreed between the Contractor and the Engineer or, failing agreement, determined by the Engineer having regard to the Contractor's Site and general overhead costs of the Contract. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of 15 per cent of the Effective Contract Price.

Daywork

52.4 The Engineer may, if in his opinion it is necessary or desirable, issue and instruction that any varied work shall be executed on a daywork basis. The Contractor shall then be paid for such varied work under the terms set out in the daywork schedule included in the Contract and at the rates and prices affixed thereto by him in the Tender.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of such of the Works executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor's Equipment used thereon or therefor other than Contractor's Equipment which is included in the percentage addition in accordance with such daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labor, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorize payment for such work, either as daywork, on being satisfied as to the time employed and the labor, materials and Contractor's Equipment used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

Procedure for Claims

Notice of Claims

53.1 Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, with a copy to the Employer, within 28 days after the event giving rise to the claim has first arisen.

Contemporary Records

53.2 Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

Substantiation of Claims

53. Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event. The Contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.

Failure to Comply

53.4 If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clauses 53.2 and 53.3).

Payment of Claims

53.5 The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer, after due consultation with the Employer and the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

Contractor's Equipment, Temporary Works and Materials

Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works

54.1 All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labor, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.

Employer not Liable for Damage

54.2 The Employer shall not at any time be liable, save as mentioned in Clauses 20 and 65, for the loss or of damage to any of the said Contractor's Equipment, Temporary Works or materials.

Customs Clearance

54.3 The Employer will use his best endeavors in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.

Re-export of Contractor's Equipment

54.4 In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the Employer will use his best endeavors to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.

Conditions of Hire of Contractor's Equipment

54.5 With a view to securing, in the event of termination under Clause 63, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any contractor employed by him for the purpose of executing and completing the Works and remedying any defects therein, under the terms of the said Clause 63.

Costs for the Purpose of Clause 63

54.6 In the event of the Employer entering into any agreement for the hire of Contractor's Equipment pursuant to Sub-Clause 54.5, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause 63, to be part of the cost of executing and completing the Works and the remedying of any defects therein.

Incorporation of Clause in Subcontracts

54.7 The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or materials brought on to the Site by the Subcontractor.

Approval of Materials not Implied

54.8 The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein not shall it prevent the rejection of any such materials at any time by the Engineer.

Measurement

Quantities

55.1 The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract.

Works to be Measured

56.1 The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorized agent, who shall:

- (a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and
- (b) supply all particulars required by the Engineer.

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, the Contractor does not agree the same or does not sign the name as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

Method of Measurement

57.1 The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.

Breakdown of Lump Sum Items

57.2 For the purposes of statements submitted in accordance with Sub-Clause 60.1, the Contractor shall submit to the Engineer, within 28 days after the receipt of the Letter of Acceptance, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall be subject to the approval of the Engineer.

Provisional Sums

Definition of "Provisional Sum"

58.1 "Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which sum Provisional Sums relate as the Engineer shall determine in accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

Use of Provisional Sums

58.2 In respect of every Provisional Sum the Engineer shall have authority to issue instructions for the execution of work or for the supply of goods, materials, Plant or services by:

- (a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52,
- (b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefor shall be determined and paid in accordance with Sub-Clause 59.4.

Production of Vouchers

58.3 The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

Nominated Subcontractors

Definition of "Nominated Subcontractors"

59.1 All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in this Contract as "nominated Subcontractors".

Nominated Subcontractors: Objection to Nomination

59.2 The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provisions:

- (a) that in respect of the work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in

connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfill such liabilities, and

(b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

Design Requirements to be Expressly Stated

59.3 If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfill such liabilities.

Payments to Nominated Subcontractors

59.4 For all work, executed or goods, materials, Plant or services supplied by any nominated Subcontractor, the Contractor shall be entitled to:

(a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the subcontract;

(b) in respect of labor supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause 58.2, as may be determined in accordance with Clause 52;

(c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

Certification of Payments to Nominated Subcontractors

59.5 Before issuing, under Clause 60, any certificate, which includes any payment in respect of work done or goods, materials, Plant or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor

(a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and

(b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing, the Employer shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontract, which the Contractor has failed to make to such nominated Subcontractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Engineer has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favor of the Contractor, deduct from the amount thereof the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

Certificates and Payment

Monthly Statements

60.1 The Contractor shall submit to the Engineer after the end of each month six copies, each signed by the Contractor's representative approved by the Engineer in accordance with Sub-Clause 15.1, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled up to the end of the month in respect of

- (a) the value of the Permanent Works executed
- (b) any other items in the Bill of Quantities including those for Contractor's Equipment, Temporary Works, dayworks and the like
- (c) the percentage of the invoice value of listed materials, all as stated in the Appendix to Tender, and Plant delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works
- (d) adjustments under Clause 70
- (e) any other sum to which the Contractor may be entitled under the Contract.

Monthly Payments

60.2 The Engineer shall, within 28 days of receiving such statement, certify to the Employer the amount of payment to the Contractor which he considers due and payable in respect thereof, subject:

- (a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in the Appendix to tender, to the amount to which the Contractor is entitled under paragraphs (a), (b), (c) and (e) of Sub-Clause 60.1 until the amount so retained reaches the Limit of Retention Money stated in the Appendix to Tender, and
- (b) secondly, to the deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer.

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

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

Payment of Retention Money

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

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

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

Correction of Certificates

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

Statement at Completion

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

(a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate

(b) any further sums which the Contractor considers to be due and

(c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

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

Final Statement

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

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

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

Discharge

60.7 Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Certificate issued pursuant to Sub-Clause 60.8 has been made and the performance security referred to in Sub-Clause 10.1, if any, has been returned to the Contractor.

Final Certificate

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

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

Cessation of Employer's Liability

60.9 The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.

Time for Payment

60.10

The amount due to the Contractor under any interim certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 28 days after such interim certificate has been delivered to the Employer, or, in the case of the Final Certificate referred to in Sub-Clause 60.8, within 56 days, after such Final Certificate has been delivered to the Employer. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest at the rate stated in the Appendix to Tender upon all sums unpaid from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69.

Approval only by Defects Liability Certificate

61.1 Only the Defects Liability Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.

Defects Liability Certificate

62.1 The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 49 and 50, have been completed to the satisfaction of the Engineer. Provided that the issue of the Defects Liability Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.

Unfulfilled Obligations

62.2 Notwithstanding the issue of the Defects Liability Certificate the Contractor and the Employer shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

Remedies

Default of Contractor

63.1 If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favor of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation

relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:

- (a) has repudiated the Contract, or
- (b) without reasonable excuse has failed
 - (i) to commence the Works in accordance with Sub-Clause 41.1, or
 - (ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Sub-Clause 46.1, or
- (c) has failed to comply with a notice-issued pursuant to Sub-Clause 37.4 or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after having received it, or
- (d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or
- (e) has contravened Sub-Clause 4.1, then the Employer may, after giving 14 days' notice to the Contractor, enter upon the Site and the Works and terminate the employment of the Contractor without thereby releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and authorities conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Temporary Works and materials as he or they may think proper.

Valuation at Date of Termination

63.2 The Engineer shall, as soon as may be practicable after any such entry and termination by the Employer, fix and determine ex parte, or by or after reference to the parties or after such investigation or inquiries as he may think fit to make or institute, and shall certify:

- (a) what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
- (b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works.

Payment after Termination

63.3 If the Employer terminates the Contractor's employment under this Clause, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and thereafter until the costs of execution,

completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

Assignment of Benefit of Agreement

63.4 Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and termination referred to in Sub-Clause 63.1, assign to the Employer the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purpose of the Contract, which the Contractor may have entered into.

Urgent Remedial Work

64.1 If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

Special Risks

No Liability for Special Risks

65.1 The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2, whether by way of indemnity or otherwise, for or in respect of:

- (a) destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks, or
- (b) destruction of or damage to property, whether of the Employer or third parties, or
- (c) injury or loss of life.

Special Risks

65.2 The special risks are:

- (a) the risks defined under paragraphs (a), (c), (d) and (e) of Sub-Clause 20.4, and
- (b) the risks defined under paragraph (b) of Sub-Clause 20.4 insofar as these relate to the country in which the Works are to be executed.

Damage to Works by Special Risks

65.3 If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:

- (a) rectifying any such destruction or damage to the Works, and
- (b) replacing or rectifying such materials or Contractor's Equipment and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

Projectile, Missile

65.4 Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, ammunition, or explosive of war, shall be deemed to be a consequence of the said special risks.

Increased Costs arising from Special Risks

65.5 Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer.

Outbreak of War

65.6 If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavors to complete the execution of the Works. Provided that the Employer shall be entitled, at any time after such outbreak of war,

to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

Removal of Contractor's Equipment on Termination

65.7 If the Contract is terminated under the provisions of Sub-Clause 65.6, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.

Payment if Contract Terminated

65.8 If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

- (a) The amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed.
- (b) The cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him.
- (c) A sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause.
- (d) Any additional sum payable under the provisions of Sub-Clause 65.3 and 65.5
- (e) Such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Contractor's Equipment under Sub-Clause 65.7 and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost.
- (f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Sub-Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

Release From Performance

Payment in Event of Release from Performance

66.1 If any circumstances outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either party to fulfill his contractual obligations, or under the law governing the Contract the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 if the Contract had been terminated under the provisions of Clause 65.

Settlement of Disputes

Engineer's Decision

67.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notification of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

Amicable Settlement

67.2 Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 67.1, arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably. Provided that,

unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, whether or not any attempt at amicable settlement thereof has been made.

Arbitration

67.3 Any dispute in respect of which:

(a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 67.1, and

(b) amicable settlement has not been reached within the period stated in Sub-Clause 67.2 shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 67.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.

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

Failure to Comply with Engineer's Decision

67.4 Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-Clauses 67.1 and 67.2 shall not apply to any such reference.

Notices

Notice to Contractor

68.1 All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmissions to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose.

Notice to Employer and Engineer

68.2 Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Part II of these Conditions.

Change of Address

68.3 Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

Default of Employer

Default of Employer

69.1 In the event of the Employer:

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) interfering with or obstructing or refusing any required approval to the issue of any such certificate, or
- (c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- (d) giving notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

Removal of Contractor's Equipment

69.2 Upon the expiry of the 14 days' notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.

Payment on Termination

69.3 In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65, but, in addition to the payments specified in Sub-Clause 65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

Contractor's Entitlement to Suspend Work

69.4 Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs cost the Engineer shall, after due consultation with the Employer and the Contractor, determine

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Resumption of Work

69.5 Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause 69.4, and the Employer subsequently pays the amount due, including interest pursuant to Sub-Clause 60.10, the Contractor's entitlement under Sub-Clause 69.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

Changes in Cost and Legislation

Increase or Decrease of Cost

70.1 There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labor and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.

Subsequent Legislation

70.2 If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the Contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Currency and Rates of Exchange

Currency Restrictions

71.1 If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Government or authorized agency of the Government of the country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Employer shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

Rates of Exchange

72.1 Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Works are to be executed.

Currencies of Payment for Provisional Sums

72.3 Where the Contract provides for payment in more than one currency, the proportions or amounts to be paid in foreign currencies in respect of Provisional Sums shall be determined in accordance with the principles set forth in Sub-Clauses 72.1 and 72.2 as and when these sums are utilized in whole or in part in accordance with the provisions of Clause 58 and 59.

REFERENCE TO PART II

As stated in the Foreword to the beginning of this document, the FIDIC Conditions comprise both Part I and Part II. Certain Clauses, namely Sub-Clauses 1.1 paragraph (a)(i), 5.1 part 14.1, 14.3, 68.2 and 70.1 must include additional wording in Part II for the Conditions to be complete. Other Clauses may require additional wording to supplement Part I or to cover particular circumstances or the type of work (dredging is an example).

Part II Conditions of Particular Application with guidelines for the preparation of Part II are printed in a separately bound document.

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Attachment 2S – Conditions of Contract

Part II - Conditions of Particular Application*

Subclause 1.1

(a)(i) "Employer" means the Ministry of Roads,(Elaboration Government of Erewhon 4.7.2.1.A) (the Contracting Agency).

(a)(iv) "Engineer" is Zantech, Inc.

(f) "USAID" means the Agency for International Development of the United States of America.

(g) "Eligible Countries" means a country designated by Geographic Code in clause 74, entitled "Nationality, Source, and Cargo Preference" from which goods and services may be obtained.

(h) "Government" means the Government of Erewhon.

(i) "Host Country" means the country of the Government.

Clause 2 (Elaboration 4.7.2.1.b)

(1) The Engineer, acting through John Doe, Resident Supervisor (the Engineer's Representative), acts as the Employer in supervising the work of the Contractor by making decisions and providing approvals on behalf of the Employer. The Engineer's role shall specifically include:

(a) Interpreting the drawings and specifications, including the review and approval of shop drawings.

(b) Approving the quality of equipment and materials delivered to the site, which may require witnessing tests of manufactured equipment prior to overseas shipment and inspecting packaging of equipment for overseas shipment.

* Discussion in 4.7.2

(c) Inspecting and accepting or rejecting work in place.

(1) (d) Requiring replacement of defective work, equipment or material.

(e) Issuing change order. Concurrence of the Employer will be necessary where their value exceeds \$50,000.

(f) Negotiating and (for Employer's approval) making recommendations regarding unit costs for work not specified in the document.*

(g) Providing certifications of progress payments invoiced by the contractor as to correct quantities and conformity to plans and specifications.

(h) Making final inspections and giving recommendation regarding acceptance of the finished project by the Employer, including approving test procedure schedules and test results.

(i) Preparing "as built" drawings.

(j) As the Employer's agent, issuing the approvals called for in Clause 10 of Part I, of this Contract. All other approvals of the Employer called for in Part I will be issued by the Employer.

* This duty is only appropriate in unit price contracts.

Subclause 3.1 (Modification 4.7.2.1.c)

USAID's prior written consent to any assignment of obligations under this contract, in addition to the consent by the Employer, required in Clause 3.1 of the General Conditions, is required.

Subclause 4.1 Subclause 4.1 in Part I is designated sub-subclause 4.1.(1). The following are added. (Modification sub-subclauses 4.7.2.1.d)

(2) All subcontracts and purchase orders in excess of \$100,000 shall only be awarded with the prior written consent of the Employer and USAID and such consent, if given, shall not relieve the Contractor from any liability or obligation under this contract.

(3) The Contractor agrees to include the following provisions of this Part II in all subcontracts hereunder:

"Air Travel and Transportation";

"Nationality, Source, and Cargo Preference;

"Worker's Compensation Insurance";

(4) If the contractor will procure equipment and materials on a cost reimbursement basis, it shall conduct such procurements in accordance with USAID the Country Contracting Handbook, Chapter 3, "Procurement of Equipment and Materials"; and

(Specify any additional provisions by clause title.)

Subclause 5.1 (Elaboration shall 4.7.2.1.e)

(a) This contract is drawn up in English and French. The English version of this contract govern and shall be designated as the "Ruling Language."

(b) This contract shall be interpreted in accordance with the laws of Erewhon.

Subclause 5.2 Subclause 5.2 of the General Conditions is deleted and the following substituted therefor: (Modification 4.7.2.1.f)

The several documents forming the contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies, the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instruction thereon and in such even, unless otherwise provided in the contract, the priority of the documents forming the contract shall be as follows:

- (1) The Contract Agreement (if completed);
- (2) The Letter of Acceptance;
- (3) The Tender;
- (4) Part II of the Conditions of Contract, Conditions of Particular Application;
- (5) Part I of the Conditions of Contract, General Conditions;
- (6) The Specifications;
- (7) The Drawings;
- (8) The priced Bill of Quantities; and
- (9) Any other document forming part of the contract.

Subclause 14.1 (Elaboration of the 4.7.2.1.g)

The Program called for in Subclause 14.2 of Part I shall be submitted within 30 days after award contract. The Program shall include a detailed construction schedule for approval of the Engineer showing starting dates, progress and completion dates for component parts of the work, a list of major equipment to be used in performance of the work, including the nature and extent of the construction plant and operations, and the extent of subcontracting proposed.

Subclause 21.1

In addition to the insurance required by Subclause 21 (Modification of Part I of the Conditions of Contract, the 4.7.2.1.h) Contractor shall insure all goods, equipment and materials financed hereunder or supplied to it by the Employer against risks incident to their transit to the point of their use in the performance of this contract, and to their storage, if any, prior to incorporation in the project. Such insurance shall insure the full value of the goods, equipment and materials and the insurance proceeds shall be payable in U.S. dollars or any fully convertible or acceptable currency. With respect to goods, equipment, and materials, the cost of which is reimbursable under the contract, the Contractor shall give prompt notice of payment to it of proceeds from insurance on any such item. Such proceeds shall be used to pay for the replacement of the items from any Code 935 country.

Subclause 23.1 (Project Specific 4.7.2.3)

In addition to the insurance required by Subclause 23.1 of Part I of the conditions of Contract, if the Contractor or any of its employees or their dependents ship to (whether or not at contract expense), or purchase privately owned automobiles in, the host country, the Contractor will ensure that all such automobiles are covered by a paid insurance policy issued by a reliable company providing the following minimum coverages (or such other minimum coverages as the Employer may set) payable in United States dollars or local currency equivalent: injury to person, \$100,000/\$200,000*; property damage, \$50,000.*

The premium costs for such insurance shall not be a reimbursable cost under this contract. Each insurance policy shall provide that the insurer agrees to investigate and defend the insured against all claims for damages.

* Amounts provided should be established on a country to country basis.

Subclause 34.1 Subclause 34.1 in Part I is designated sub-subclause 34.1.(1). The following are added. (Modification sub-subclauses 4.7.2.1.i)

- (2) The Contractor shall comply with the existing local labor laws, regulations, and labor standards.
- (3) The Contractor shall formulate and enforce an adequate safety program with respect to all work under this contract, whether performed by the Contractor or subcontractors. The Contractor has assurance from the Employer of cooperation where the implementation of these safety measures requires joint cooperation.
- (4) Upon the written request of the Employer, the Contractor will remove or replace any of its employees employed under this contract.
- (5) All Contractor and subcontractor employees shall at all times while in the host country conduct themselves within the laws of such country.
- (6) The Contractor shall ensure that all employees (other than those hired in the host country) are physically fit for work under this contract and dependents authorized to accompany the employee to the host country are physically fit for residence in the host country.

Subclause 43.1 (Project Specific 4.7.2.3)

Intermediate completion dates for the construction are as follows: Kilometers 1-20 completed within 90 days after commencement of work on site. Kilometers 21-40 within 180 days after commencement of work on site.

- (3) If the Contractor completes the work prior to the time fixed in the contract, the Engineer or its representative shall so certify in writing, and the Contractor shall be paid

a bonus not to exceed the amount stated in the Appendix to Tender in accordance with the following schedule:

Subclause 51.2 (Modification than 4.7.2.1.j)

All Orders for variations which are estimated to increase or decrease the contract amount by more \$500,000 must have the written approval of USAID.

Subclause 54.3 (Elaboration 4.7.2.1.k)

If the Contractor determines that any part of the Constructional Plant which the Contractor shall have imported for the purposes of the Works should not be reexported but shall be used for another project in the host country, the Contractor shall be liable for all appropriate customs, duties, and other taxes.

***Clause 60 The following clause is substituted for Clause 60 in Part I of the Conditions of Contract. (Elaboration 4.7.2.1.l)**

(1) General

Payments under the Contract shall be made in U.S. dollars and local currency in accordance with the Bill of Quantities.

(2) Payments of U.S. Dollars

(a) Within 60 days after award of this Contract, the Employer will establish at its expense a confirmed, divisible, irrevocable letter or credit in favor of the Contractor with a United States bank acceptable to both parties in an amount equal to the total U.S. dollar portion of the Contract. This letter of credit shall not expire prior to 48 months after its issuance.

(b) The U.S. dollar letter of credit shall provide that the bank shall pay at sight the Contractor's drafts for the total U.S. dollar items in the Contractor's interim statement when accompanied by a copy of such statement approved by the Employer and the appropriate documentation as set forth in paragraph (7) below.

* This sample clause assumes that the Bank Letter of Commitment method of payment is being used. It must be appropriately modified if a Direct Letter of Commitment or Direct Reimbursement is used.

(3) Payment of Local Currency

(a) Within 60 days after award of this Contract, the Employer will establish in favor of the Contractor with a host country bank acceptable to both parties an irrevocable, divisible, confirmed letter of credit in an amount equal to the total local currency portion of the contract.

(b) The local currency letter of credit shall provide for payment to the Contractor of local currency amounts in the Contractor's interim statements bearing the approval of the Employer, and the appropriate documentation as set forth in paragraph (7) below.

(4) Payment Schedule

Within 30 days after receipt of the confirmation that the letter of credit has been established, the Contractor shall submit a proposed payment schedule indicating the estimated payments throughout the life of the Contract. This schedule shall be in a form satisfactory to the Engineer, shall be consistent with the general construction schedule, and shall be in sufficient detail to permit the Engineer to prepare cash flow projections for the Employer.

(5) Mobilization Payment

The Contractor may, at its option, receive a mobilization payment under the letter of credit in an amount not to exceed 10 percent of the U.S. dollar component of the contract amount within 60 days after notification that the letter of credit has been opened. The mobilization payment shall be made by the bank upon presentation of the Contractor's draft indicating approval of the payment by the Employer.

(6) Progress Payments

(a) At regular intervals mutually agreed upon by the Contractor and the Employer (but not more often than monthly), the Contractor shall submit to the Engineer for review an interim statement in a form acceptable to the Employer, filled out and signed by the Contractor, covering the cumulative amount and value of work carried out as of the date of the statement and accompanied by such data, schedules, receipted bills, and affidavits as the Engineer may reasonably require as well as appropriate documentation as set forth in paragraph (7). The statement shall be computed on the basis of the lump sums and unit prices of the contract in U.S. dollars and local currency.

(b) The Engineer shall within 15 working days after receipt of each interim statement, either indicate in writing its certification of payment due and present the statement to the Employer or return the statement to the Contractor indicating in writing its reasons for refusing such certification of payment. In the latter case, the Contractor shall make the necessary corrections and resubmit the statement.

(c) The Engineer's certification of any payment requested in an interim statement will constitute a representation by it to the Employer, based on the Engineer's on site observations of the work in progress and on its review of the interim statement and the accompanying data that the work has progressed to the point indicated and that, to the best of its knowledge, information and belief, the quality of the work is in accordance with the contract. The Engineer may refuse to certify the whole or any part of any payment if, in its opinions, it would be incorrect to make such representations to the Employer.

(d) Within 20 working days of receipt of the Engineer's certification of the interim statement, the Employer shall act upon said statement by (1) approving payment,

(2) informing the contractor of any objections to the statement, or (3) informing the Contractor of its intent to withhold all or part of the progress payment and the contractual justification for withholding payment.

(e) Within 30 days of the Engineer's certification of the interim statement (unless the Employer notifies the Contractor of an objection to the statement or payment is withheld as provided above), the Contractor shall be paid the amount due, minus the retention amount stated in paragraph (8) below.

(7) Documentation for Payment

Each interim statement and the final statement must be accompanied by the following documentation whether payment is to be made in U.S. dollars or local currency.

(a) The Contractor's invoice (one copy) describing the services performed and identifying the section in the contract which contains the terms of payment.

(b) For each shipment of equipment, materials, and commodities during the period covered by the request for payment.

i. A copy or photostat of the bill of lading (ocean, charter party, airway, barge, or truck) or parcel post receipt evidencing shipment from the source country or a free port or bonded warehouse to the host country. The bill of lading shall indicate the carrier's complete statement of charges including all relevant weights, cubic measurements, rates, and additional charges whether or not freight is financed by USAID.

ii. Where shipment is effected from a free port or bonded warehouse, a copy of the bill of lading, bearing a notation of the freight costs, covering shipment from the source to the free port or bonded warehouse and, if the free port or bonded warehouse is located within the host country, accompanied by a delivery receipt evidencing release from the free port or bonded warehouse to the Contractor. The date of the delivery receipt will be considered as the shipment date for the transaction and therefore must be dated within such delivery period as may be specified in the letter of commitment.

(c) The Contractor's Certificate and Agreement with the Agency for International Development, Contractor's Invoice and Contract Abstract, Form USAID 1440-3, shall be prepared in accordance with instructions thereon.

(d) A certificate, signed, and dated by the Contracting Agency or Engineer (if formally authorized), as follows:

i. For progress payments: "The Borrower/Grantee certifies that (1) the services (or for equipment and materials) for which payment is requested have been satisfactorily performed (delivered) and (2) the payment requested is in accordance with the terms of the contract."

ii. For final payment: "The Borrower/Grantee certifies that the for which final payment is invoiced meets in all respects the specification prescribed

in the covering contract, and the amount invoiced is properly due and payable under the terms of the contract."

(e) If the contract has been terminated pursuant to the provisions herein, the claim for termination costs shall be accompanied by:

- i. Written justification by the contractor supporting in detail the claimed charge.
- ii. Either written concurrence by the Employer to the contractor's claim or a certified copy of an arbitration award.

(8) Retentions

The Employer shall deduct and retain an amount equal to 5 percent of the total amount certified by the Engineer on each interim statement. The retained amounts shall be paid upon final acceptance of the work.

(9) Final Payments

Final payment of all amounts due the Contractor (including retentions) will be made upon submission of the documentation required by paragraph (7) above and after the Certificate of Completion has been issued by the Engineer.

(10) Monies or Credits Due the Employer

Whenever throughout the life of the Contract and before final payment, certain monies become due by the Contractor to the Employer, the Employer shall have the right to recover such costs by either of the following methods or combination thereof:

- (a) Deduction from monies due the Contractor, or to later become due the Contractor, or being retained by the Employer pending final acceptance of the work, or
- (b) Recovery from the Contractor's surety.

Clause 67 (Modification* 4.7.2.2.h)

Where it is decided that a settlement of dispute procedure, other than that specified in the FIDIC clause, should be used, the clause may be varied within the restrictions of Section 4.7.2.2.h.

EXAMPLE

In Subclause 67.3, delete the words shall be finally settled...International Chamber of Commerce and substitute shall be finally settled under the UNCITRAL Arbitration Rules as administered by a (insert name of administering authority).

Where alternative procedures are considered, care should be taken to establish that the favored alternative is appropriate for the circumstances of the contract and that the wording of Clause 67 is checked and amended as may be necessary to avoid any ambiguity with the alternative.

* A Settlement of Disputes clause is mandatory, but certain modifications to the FIDIC clause are permitted.

Clause 68 (Elaboration 4.7.2.1.n)

(1) Employer's address is:

Ministry of Roads
Transcountry Division
Propowog, Erewhon

Engineer's address is:
Zantech Inc.
Box 123
Propowog, Erewhon

Contractor's address is:
Mechano, Inc.
456 Main Street
Podunk, LA USA

Clause 70* (Elaboration 4.7.2.1.p)

(1) Price Adjustment Formula for Local Currency Cost

(a) The prices quoted by the bidder should not include any amount to cover the contingency of a rise in the cost of labor and materials to the extent that compensation for such rise is covered by the provisions of this clause.

(b) Account will be taken of the increase or decrease in labor rates and costs of materials by multiplying the local currency portion of each monthly payment to the Contractor by an adjustment factor (k) computed according to the following formula:

$$K = 0.15 + \frac{0.35LL}{LLo} = \frac{0.20FU}{FUo} + \frac{0.10BI}{Blo} + \frac{0.1CE}{CEo} + \frac{0.10RS}{RSo}$$

*This is an example of a Price Adjustment Formula for local currency costs. If conditions warrant, a similar formula may be developed for the U.S. dollar costs of the contract. In the example, the weights of the various constituents of the formula are determined by the Engineer. The tenders are permitted to request modifications. Another method is to have the various weights set by the contractor and justified to the Engineer on request. The First weight given in the example formula is the nonvariable portion of the estimate. The sum of all weights must be equal to unity for every applications of the formula.

LL represents the current index or price for local labor, FU - fuel, BI - bitumen, CE - cement and RS - reinforcing steel all at the specified time related to the payment considered for adjustment, while LLo, FUo, etc., represent respectively basic indices or prices as specified hereafter.

(c) The weights given above to local labor, fuel, etc. may be reviewed and modified by the Employer if requested by the Contractor provided the Employer is satisfied that such modification is justified by the method of execution of the project proposed by the Contractor. However, the contract price is based on the application of the formula indicated above and as specified hereafter.

(d) The basic indices or prices shall be those ruling on the day 30 days before the closing date for the submission of Tenders and the current indices or prices shall be those ruling on the day 30 days prior to the last day of the period to which the payment certificate refers. If at any time the officially published relevant indices are not available, provisional indices will be used subject to the correction of the amounts paid in respect of price adjustment based on provisional indices when such official indices become available.

(e) Application of this clause will not apply as long as the value of the adjustment factor (K) remains between 0.97 and 1.03. Further, the adjustment of prices to current indices shall be applied only during the contract time or its approved extension. Payments for the work carried out after the approved contract time will be adjusted using the last adjustment factor for the approved contract time, provided the factors based on the current prices at the time of such payments are not lower than the last adjustment factor. In such case the lower adjustment factor shall be applied.

(f) The indices mentioned above are as follows:

LL, LLo = Industrial wages index published in the Official Publication (Name of Publication) of the (Government Agency).

FU, FUo = Price per 100 liters of diesel fuel (bulk) FOB distributor in (City near Project).

BI, Blo = Price per ton of pure 60/70 asphalt in nonreturnable barrels in (City near Project).

CE, CEo = Price per ton of artificial Portland cement 250/315 from any source, in paper bags CIF at port of entry.

RS, RSo = Price per ton of 6 to 30 mm. Diameter concrete reinforcing steel bars in (City near Project).

(g) Maximum Percentage of Contract Price Revision by Means of the Price Adjustment Factor: The increase of the original local currency portion of the contract price by means of the Price Adjustment Factor shall not exceed fifteen percent (15%). It is however, specified that if during construction it appears that the total amount of revisions calculated with the adjustment factor "K" is likely to exceed fifteen percent (15%), the Contractor may request from the Employer, by registered letter with acknowledgement of delivery, a corresponding increase of the fifteen percent (15%) limit of price increase.

Clause 73* Legal Effect of USAID Approvals and Decisions (USAID required 4.7.2.2.a)

The parties hereto understand that the contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this contract, the Contractor, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this contract and the project of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure that proper use of United State Government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making USAID a party to the contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibilities or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Employer or USAID from asserting any right, or relieve the Contractor of any liability which the Contractor might otherwise have to the Employer or USAID.

* This clause must be used verbatim in every contract.

Clause 74 Nationality, Source, and Cargo Preference (USAID required 4.7.2.2.b)

(1) Unless otherwise specified in paragraph (4), (5), (6), or (7) below or in the clause entitled "Air Travel and Transportation," in order to be eligible for USAID financing all goods and services provided by the Contractor or any subcontractor under this contract shall have their nationality, source, and origin in those countries listed in USAID Geographic Code* in effect on the date of acquisition and/or in ("Eligible Countries"). However, the source rule does not apply to goods owned by the Contractor prior to bid opening.

Citizens of any country or area, and firms and organizations located in or organized under the laws of any country or area which is not included in USAID Geographic Code 935 are ineligible for financing by USAID as suppliers of services or commodities or as agents acting in connection with the supply of services or commodities, except that non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible regardless of such citizenship.

** See Attachment 2A for a list of Geographic Codes.

(2) Definitions

(a) Source

"Source" means the country from which a commodity is shipped to the Cooperating Country or the Cooperating Country itself if the commodity is located

therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse.

(b) Origin

The "origin" of a commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when through manufacturing, processing, or substantial and major assembling of components a commercially recognized new commodity results that is substantially different in basic characteristics or in purpose or utility from its components.

(c) Componentry

"Components" are the goods that go directly into the production of a produced commodity. Any component from a Foreign Policy Restricted Country makes the commodity ineligible for USAID financing.

(3) Nationality

(a) Suppliers of Commodities

A supplier* providing goods must fit one of the following categories to be eligible for USAID financing:

1. An individual who is a citizen or, except as provided in paragraph (1) above, a legal resident of a country or area included in the authorized geographic code;
2. A corporation or partnership organized under the laws of a country or area included in the authorized geographic code;
3. A controlled foreign corporation; i.e., any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock is owned by United States shareholders within the meaning of Section 957 et seq. of the Internal Revenue Code, 26 U.S.C. 957; or

*Nationality rules do not apply to suppliers of incidental services related to the procurement of equipment; incidental services are defined as the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation, or use of such equipment.

4. A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which fit any of the foregoing categories.

(b) Suppliers of Services

1. Privately Owned Commercial Suppliers

An individual or a privately owned commercial firm is eligible for financing by USAID as a subcontractor providing a, b, or c below are met and, in the case of the categories described in b and c, the certification requirements in subparagraph d are met.

a. The supplier is an individual who is a citizen of and whose principal place of business is in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;

b. The supplier is a privately owned commercial (i.e., for profit) corporation or partnership that is incorporated or legally organized under the laws of a country or area included in the authorized geographic code, has its principal place of business in a country or area included in the authorized geographic code, and meets the criteria set forth in either subparagraph (i) or (ii) below:

(i) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code and non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(ii) The corporation or partnership:

I. has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals, and

II. has performed within the United States similar administrative and technical, professional or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the date described in the preceding paragraph, and

III. employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States, and

IV. has the existing capability in the United States to perform the contract.

c. The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or nonprofit organizations which are eligible under 1a or 1b, above, or 2 below.

d. The duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of subparagraphs b.(1) or b.(ii), or 2. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subparagraph b(i), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

2. Nonprofit Organizations

Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by USAID as contractors or subcontractors for services if they meet all of the criteria listed in subparagraphs a, b, and c below, and the certification requirement in 1d above is met.*

a. Be organized under the laws of a country or area included in the authorized geographic code; and

b. Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

c. Have its principal facilities and offices in a country or area included in the authorized geographic code.

*International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the Senior Assistant Administrator, Bureau for Science and Technology, are considered to be of U.S. nationality.

3. Government-Owned Organizations

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public education institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by USAID as subcontractors, except if their eligibility has been established by a waiver.

4. Joint Ventures

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with (b)1, 2, or 3 above.

5. Construction Services from Local Firms

When the host country is an authorized source for services, and the estimated cost of the subcontract for construction services is \$5 million or less, a corporation or partnership which is determined by USAID to be an integral part of the local economy is eligible. However, such a determination is contingent on first ascertaining that no U.S. construction company with the required capability is currently operating in the host country or, if there is such a company, that it is not interested in bidding for the proposed sub-contract. In the latter case, inquiries on a company's interest should be addressed to its headquarters.

A corporation or partnership is an integral part of the local economy provided:

- a. It has done business in the host country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals;
- b. It has a demonstrated capability to undertake the proposed activity;
- c. All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the host country;
- d. Most of its operating equipment and physical plant are in the host country.

(c) Nationality of Employees under Contracts and Subcontracts for Services

1. General

The nationality policy of subparagraph (b), above, does not apply to the employees of contractors or subcontractors, but all contractor and subcontractor employees engaged in providing services under USAID-financed contracts must be citizens of countries included in USAID

Geographic Code 935 or non-U.S. citizens lawfully admitted for permanent residence in the United States.

2. Key Personnel (Applicable to Contracts with U.S. Firms only.)

At least half of the full-time supervisors and other key personnel specified in the contract schedule working at the project site(s) shall be citizens or permanent legal residents of the United States. If more than one project site is specified in the contract, this requirement is individually applicable to each project site in the Cooperating Country. Exceptions to this requirement may be authorized in the contract schedule if special circumstances make compliance impractical.

(4) Motor Vehicles

Motor vehicles must be manufactured in the United States, i.e., the source may be any eligible country, the origin must be the United States, and componentry must meet the criteria in (2)(c) above. A vehicle which was assembled in the United States but then subjected to minor disassembly to reduce shipping costs is considered a U.S.-manufactured vehicle.

However, so-called "knocked-down vehicles" consisting of parts or subassemblies of vehicles shipped from the United States for final assembly into completed vehicles elsewhere, are not considered vehicles and, therefore, may have their source and origin in any eligible country.

(5) Source of Delivery Services

(a) With respect to ocean or air freight, "source" means the flag of the vessel or air carrier.

(b) Ocean Freight*

* Use subparagraph (b)(1) through (b)(4) when the authorized Geographic Code is 941. If the authorized Geographic Code is 000, the clause should require instead that all ocean freight be shipped on U.S. flag vessels and include subparagraphs (b)(3) and (b)(4).

1. No less than fifty percent* of the gross tonnage of all USAID-financed goods transported to the host country on ocean vessels for use in connection with this contract shall be transported on privately owned United States flag commercial vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) to the extent such vessels are available at fair and reasonable rates for such vessels. In addition, at least fifty percent of the gross freight revenue generated by all shipments of USAID-financed commodities transported to the host country on dry cargo liners shall be paid to or for the benefit of privately owned United States liners, to the extent such vessels are available. The equipment

and materials to which this requirement applies do not include (i) goods which were owned or leased by the Contractor prior to bid opening, (ii) any other goods the procurement of which was not directly or indirectly financed by USAID, or (iii) shelf items or consumables purchased in the host country. This requirement applies whether or not USAID finances transportation.

2. When the authorized Geographic Code is 000, ocean transportation costs may be incurred only on U.S. flag vessels.

3. When the authorized Geographic Code for commodities is other than Code 000, ocean transportation costs may be incurred on vessels under flag registry of the United States or any other country in Code 935.

4. When shipment is made under a through bill of lading issued by a U.S. flag carrier, ocean transportation costs may be incurred on vessels under flag registry of any country in Code 935 if the costs are part of the total cost paid to the eligible flag carrier.

5. Not later than 30 days from the date of shipment, the Contractor shall mail a legible copy of all rated Ocean Bill(s) of Lading to: (i) Maritime Administration, Division of National Cargo, 400 Seventh St., S.W., Washington, D.C. 20590-0001 and (ii) Office of Procurement, Transportation Division, USAID, Washington, D.C. 20523-1419.

* The "50/50" rule is set forth in the SOAG Agreement. The percentage for each contract may vary as long as overall shipments under the SOAG are at least 50% on U.S. flag vessels.

(c) Air Freight

The source requirements for air carriers are set forth in the clause of this contract entitled "Air Travel and Transportation."

(d) The Contractor shall not ship equipment, material, or other goods procured for the performance of this contract on any ocean or air carrier which has been chartered for the carriage of such items until the Contractor has received written notice from the Contracting Agency that the charter has been approved by USAID.

(6) Source of Marine Insurance

(a) In the case of insurance, "source" means the country in which such insurance is placed. Insurance is placed in a country if payment of the insurance premium is made to and the insurance policy is issued by, an office located in the country.

(b) Insurers of any Eligible Country and the host country, if the authorized Geographic Code is other than Code 000, may be used if the government of the country in which the insurance is placed does not discriminate against United States marine insurance carriers by statute, decree, or regulation.

(c) If at any time USAID determines that the Government of the host country by statute, decree, rule or regulation discriminates, with respect to USAID-financed procurement, against any marine insurance company authorized to do business in the United States, then USAID shall require that any USAID-financed goods thereafter shipped to the host country shall be insured against marine risks, and that such insurance shall be placed in the United States with a company or companies authorized to do insurance business in the United States.

(7) Local Procurement

(a) Local procurement involves the use of appropriated funds for the procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the cooperating country.

(b) All local procurements must be covered by source/and nationality waivers, with the following exceptions:

1. Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed the local currency equivalent of \$100,000 (exclusive of transportation costs).
2. Commodities of geographic code 935 origin if the value of the transaction does not exceed \$5,000 (exclusive of transportation costs).
3. Professional services contracts estimated not to exceed \$250,000.
4. Construction services contracts estimated not to exceed \$5,000,000.
5. The following commodities and services which are available only locally:
 - A. Utilities including fuel for heating and cooking, waste disposal, and trash collection;
 - B. Communications -- telephone, telex, fax, postal and courier services;
 - C. Rental costs for housing and office space;
 - D. Petroleum, oils and lubricants for operating vehicles and equipment;
 - E. Newspapers, periodicals and books published in the cooperating country;

F. Other commodities and services (and related expenses) that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

Clause 75 Audit and Records (Project specific 4.7.2.3)

(1) The Contractor shall maintain books, records, documents, and other evidence and shall apply consistent accounting procedures and practices sufficient to reflect properly all transactions under or in connection with the contract. The foregoing constitute "records" for the purpose of this clause.

(2) The Contractor shall maintain such records during the contract term and for a period of 3 years after final payment. However, records which relate to disputes under the "Settlement of Disputes" clause or litigation or settlement of claims arising out of the performance of this contract shall be retained until such disputes, litigation, or claims have been finally settled.

(3) All records shall be subject to inspection and audit by the Employer (or its authorized agents) at all reasonable times. The Contractor shall afford the Employer proper facilities for such inspection and audit.

(4) The Contractor further agrees to include in all its subcontracts hereunder a provision that the subcontractor agrees that the Employer or any of its authorized agents, shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any records of such subcontractor involving transactions related to the subcontract.

Clause 76* Use of U.S. Flag Air Carriers (USAID required 4.7.2.2.d)

(1) The Contractor shall utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carrier is available, in accordance with the following criteria:

(a) If a U.S.-flag air carrier cannot provide the international air transportation needed, or if the use of a non-U.S. flag carrier is approved by USAID in order to accomplish the Agency's mission, foreign-flag air carrier service may be deemed necessary.

(b) Passenger or freight service by a U.S.-flag air carrier is considered available even though:

(1) Comparable or a different kind of service can be provided at less cost for a foreign- flag air carrier;

(2) Foreign-flag air carrier service is preferred by, or is more convenient for, the Contractor or traveler; or

(c) Except as provided in paragraph (a) above, U.S.-flag air carrier service shall be used for commercial foreign air travel under this contract if service provided

by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

(1) U.S.-flag air carrier service available at point of origin shall be used to destination, or in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

* This paragraph must be used verbatim in all USAID grant-financed contracts and in loan-financed contracts when the authorized Geographic Code is 000. When a loan authorizes Geographic Code 941, the paragraph is used verbatim except to substitute "Host country, U.S., or other Code 941" for "U.S." wherever it appears.

(2) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if:

(1) The gateway airport abroad is the traveler's origin or destination airport and the use of U.S. flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or

(2) The gateway airport abroad is an interchange point and the use of U.S. flag air carrier service would require the traveler wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by a least 6 hours more than travel by a foreign-flag air carrier.

(e) For travel between two points outside the United States, the rules in paragraphs (a), (b), and (c) shall be applicable, but passenger service by a U.S. flag air carrier shall not be considered to be available if:

(1) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes in route;

(2) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S. flag air carrier would extend the time in a travel status by a least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(3) The travel is not part of the trip to or from the United States and the use of a U.S. flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including delay at origin, delay en route, and accelerated arrival at destination.

(f) For all short-distance travel under either paragraph (d) or paragraph (e) above, U.S. air carrier service shall not be considered available when the elapsed travel time on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such travel time.

(2) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, it will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S. flag air carrier was unavailable for the following reasons:

[State reasons]

(3) If travel is by indirect route or the traveler otherwise fails to use available U.S. flag air carrier service, and the certification required by paragraph (2) above is not attached to the applicable voucher, USAID will not finance the amount determined under the following formula:

Sum of U.S.-flag carrier segment mileage authorized Sum of all segment mileage authorized	x	Fare payable by Government
MINUS		
Sum of U.S.-flag carrier segment mileage traveled Sum of all segment mileage traveled	x	Through fare paid

(4) The terms used in this clause have the following meanings:

(a) "Gateway airport abroad" means the airport from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.

(b) "Gateway airport in the United States" means the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives.

(c) "International air transportation" means transportation by air between a place in the United States and a Place outside the United States or between two places both of which are outside the United States.

(d) "U.S.-flag air carrier" means an air carrier holding a certificate under section 401 of the U.S. Federal Aviation Act of 1958 (49 U.S.C. 1371).

(5) The Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase order hereunder which may involve international air transportation.

Clause 77 Worker's Compensation Insurance* (USAID required 4.7.2.2.e)

The insurance required by subclause (2) of clause 24 of Part I of the Conditions of Contract must comply with the following:

(1) The Contractor shall provide and thereafter maintain Worker's Compensation Insurance assuring payment of benefits provided under the Defense Base Act (42 U.S.C. 1651) with respect to and prior to the departure for overseas employment under this Contract of all employees who are hired in the United States or who are American citizens or bona fide residents of the United States.

* This clause assumes that a waiver has been obtained from Defense Base Act insurance requirements for host country and third country nationals.

(2) To the extent that such a USAID contract is available to provide DBA insurance, the Contractor agrees to procure the DBA insurance required by this clause from the DBA insurance carrier under contract with USAID, unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA. Information on obtaining coverage under the USAID requirements contract and the list of countries for which USAID has secured waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, is shown in the Country Contracting Handbook, Chap 2, 4.7.2.2.e.

(3) The Contractor agrees to provide employees who are not citizens of, residents of, or hired in the United States with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits, or in the absence of such law, employer's liability insurance.

(4) With respect to all employees who are hired for employment outside the country in which they are to be employed, this insurance coverage shall be provided prior to the departure for overseas employment under this Contract.

- (5) The Contractor shall insert a clause similar to this clause, including this sentence, in all subcontracts except those exclusively for furnishing equipment and/or materials.

Marking

The Contractor shall ensure that project construction sites and other project locations are identified with display signs, suitably marked with the USAID handclasp symbol, indicating participation by the United States in the project. Temporary signs must be erected at the beginning of construction and be replaced by permanent signs, plates or plaques, suitably marked with the USAID handclasp symbol, upon completion of construction. The USAID Mission in the host country or the Office of Procurement in USAID/Washington will provide information on marking requirements for the project.

Host Country Taxes

- (1) Pursuant to the bilateral agreement between the United States Government and the host country government, the Contractor and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes, fees, levies, customs, or impositions imposed under laws in effect in the host country with respect to all work and services performed under this contract. This exemption includes all customs, duties, and registration fees.
- (2) With respect to shelf items, "identifiable" taxes, fees, customs, levies, or impositions of the Government or any subdivision thereof are those which are added to the price of goods or services and stated separately on invoices for same. These charges are subtracted from the price at the time of purchase. With respect to items imported for the project, any such taxes, fees, customs, levies or impositions shall be paid by the Employer.
- (3) The personal effects (including vehicles) of the Contractor and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes imposed under laws in effect in the host country with respect to such personal effects.
- (4) The Government will allow the contractor to import free of customs and duties such materials and equipment as may be required for the services under this contract provided such items are either reexported to transferred to the Government at the conclusion of the contract.
- (5) Any taxes, fees, levies, customs or imposition within the scope of paragraphs (1) through (3) above paid by the Contractor shall be reimbursed by the Employer.

Clause 78 Marking (USAID required 4.7.2.2.f)

The Contractor shall ensure that project construction sites and other project locations are identified with display signs, suitably marked with the USAID handclasp symbol, indicating participation by the United States in the project. Temporary signs must be erected at the beginning of construction and be replaced by permanent signs, plates or plaques, suitably marked with the USAID handclasp symbol, upon completion of construction. The USAID

Mission in the host country or the Office of Procurement in USAID/Washington will provide information on marking requirements for the project.

Clause 79 Host Country Taxes (USAID required 4.7.2.2.g)

(1) Pursuant to the bilateral agreement between the United States Government and the host country government, the Contractor and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes, fees, levies, customs, or impositions imposed under laws in effect in the host country with respect to all work and services performed under this contract. This exemption includes all customs, duties, and registration fees.

(2) With respect to shelf items, "identifiable" taxes, fees, customs, levies, or impositions of the Government or any subdivision thereof are those which are added to the price of goods or services and stated separately on invoices for same. These charges are subtracted from the price at the time of purchase. With respect to items imported for the project, any such taxes, fees, customs, levies or impositions shall be paid by the Employer.

(3) The personal effects (including vehicles) of the Contractor and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes imposed under laws in effect in the host country with respect to such personal effects.

(4) The Government will allow the contractor to import free of customs and duties such materials and equipment as may be required for the services under this contract provided such items are either reexported to transferred to the Government at the conclusion of the contract.

(5) Any taxes, fees, levies, customs or imposition within the scope of paragraphs (1) through (3) above paid by the Contractor shall be reimbursed by the Employer.

Clause 80 Termination of Contract for Convenience of the Employer (Project Specific 4.7.2.3)

(1) If at any time before completion of work under the Contract it shall be found by the Employer that reasons beyond the control of parties render it impossible or against the interest of the Employer to complete the work, the Employer at any time, by written notice to the contractor, may discontinue the work and terminate the contract in whole or in part. Upon the service of such notice of termination the Contractor shall discontinue to work in such manner, sequence and at such times as the Engineer may direct, continuing and doing after said notice only such work and only until such time or times as the Engineer may direct. The Contractor shall have no claim for damages for such discontinuance or termination of the Contract but the contractor shall receive compensation for reasonable expenses incurred in good faith for the performance of the Contract and for reasonable expenses associated with termination of the Contract. The Employer will determine the reasonableness of such expenses. The Contractor shall have no claim for anticipated profits on the work thus terminated, nor any claim, except for the work actually performed at the time of complete discontinuance, including any variation authorized by the Engineer to be done under the section dealing with variation,

after the date of said order, and for any claims for variations accruing up to the date of said notice of termination.

(2) In the event that the work shall be so discontinued and the contract terminated, the satisfactory completion of such work as the Engineer may direct in satisfactory compliance with the terms of said order shall be deemed the completion of the work specified in this contract, and the final statement shall be of the amount of work completed to the time of the discontinuance and termination together with such other items as may be due the contractor in accordance with the provisions of this clause.

Clause 81 Disposition of Personal Property in the Cooperating Country (USAID required 4.7.2.2.i)

a. When a Contractor employee or a family member who is present in the Cooperating Country as a dependent under the contract disposes of personal property which has been imported or acquired under an exemption of Cooperating Country import restrictions, customs duties, or taxes by virtue of his/her status under this or a predecessor USAID-financed contract; such disposition shall be subject to rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government contractors in the Cooperating Country. This restriction applies under either grant- or loan-funded contracts, notwithstanding reference to only grant-funded contracts in 22 CFR Part 136. As used in this clause, the term "Contractor employee" includes any consultants, experts, or other personnel of the Contractor.

b. The Contractor will (1) develop and apply appropriate disciplinary procedures for violations of the rules--procedures that are comparable to those applicable to U.S. Government employees at the same post, (2) notify those employees that are subject to the rules of the content and implications of the rules and the disciplinary procedures, and (3) obtain (and retain in the Contractor's records) written acknowledgment of this notification from those employees.

c. The Contractor agrees to incorporate the substance of this clause, including this paragraph c. in all subcontracts under this contract if performance in the Cooperating Country is required.

Clause 82. Equal Employment Opportunity (USAID required 4.7.2.2.j)

The Contractor will not discriminate in recruitment or employment conditions of personnel hired in the United States because of race, religion, color, sex, or national origin and will maintain compliance with its equal employment opportunity obligations under Executive Order 11246 dated September 24, 1965.

Clause 83. Audit and Records (USAID required 4.7.2.2.k)

A. The Contractor shall maintain books, records, documents, and other evidence to substantiate, without limitation, all costs incurred under or in connection with the contract and to substantiate the other contract requirements in accordance with generally accepted accounting principles prevailing in the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to substantiate properly all transactions under or in

connection with the contract. This clause does not apply to cost records for nonreimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to records concerning source of goods and other comparable contract requirements applicable to such items. The foregoing constitute "records" for the purpose of this clause.

B. The Contractor shall maintain such records during the contract term and for a period of 3 years after final payment. However, records which relate to appeals under the "Disputes and Appeals" clause or litigation or the settlement of claims arising out of the performance of this contract shall be retained until such appeals, litigation, or claims have been finally settled.

C. All records shall be subject to inspection and audit by the United States Government, the Contracting Agency, or its authorized agents at all reasonable times. The Contractor shall afford the auditor proper facilities for such inspection and audit.

D. The Contractor further agrees to include in all its subcontracts hereunder a provision that the subcontractor agrees to maintain such records and that the U.S. Government, the Contracting Agency, or any of its authorized agents shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any records of such subcontractor involving transactions related to the subcontract.

***Clause 84. Anti-Corruption Provisions (USAID required 4.7.2.2.I)**

No offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of this contract. Any such practice will be grounds for cancelling the award of this contract and for such other additional actions, civil and/or criminal, as may be applicable.

Attachment 2S: Conditions of Contract Table: Bid Items

BID No.	BID ITEMS	Quantity		U.S.		TOTAL AMOUNT	
				Dollar	Currency	Dollar	Currency
<i>Item No. 1 - General</i>							
1/01	Mobilization (limited to maximum of fifteen percent (15%) of the total tender amount)	Lump Sum		---	---		
1/02	Engineer's Staff Housing, Type B-1	2	Each				
1/03	Contractor Staff Housing, Type B-2	5	Each				
1/04	Warehouses	2	Each				
1/05	Office Block	1	Each				
1/06	Provide and Maintain Vehicles for Engineer	180	Vehicle Month				
<i>Item No. 2 - Site Clearing</i>							
2/01	Clear and Grub	670	Hectares				
<i>Item No. 3 - Earthworks</i>							
3/01	Common Excavation, Cut to Fill	820,000	Cu. M.				
3/02	Common Excavation, Cut to Spoil (Provisional)	40,000	Cu. M.				
3/03	Ninety Millimeter Thick Dressing of Selected Humus Soil to Embankment Slopes	10,000	Sq. M.				
3/04	Covering Slopes with Small Tree Branches	10,000	Sq. M.				
<i>Item No. 4 - Culverts</i>							
4/01	450 mm Diameter Pipe, Nestable Galvanized Corrugated Metal 16 USSG or Reinforced Concrete	828	Linear M				
4/02	900 mm Diameter Pipe, Nestable Galvanized Corrugated Metal 14 USSG or Reinforced Concrete	406	Linear M				
4/03	Endwall-Single, 450 mm Diameter Pipe	78	Each				
4/04	Endwall-Single, 900 mm Diameter Pipe	12	Each				

BID No.	BID ITEMS Description	Quantity	Unit	UNIT RATE		TOTAL AMOUNT	
				U.S. Dollar	Local Currency	U.S. Dollar	Local Currency
4/05	Endwall-Double, 900 mm Diameter Pipe	8	Each				
<i>Item No. 5 - Pavement Structure</i>							
5/01	Subbase - Placing and Compacting	120,000	Sq. M.				
5/02	Subbase - Excavating, Loading, & Hauling	10,000	Cu. M.				
5/03	Overhaul - Subbase (Provisional)	30,000	Cu M/Kil				
5/04	Base	303,000	Cu. M.				
5/05	Overhaul-Base (Provisional)	800,000	Cu M/Kil				
5/06	Asphalt Prime Coat of MC 30 Cutback Bitumen	635,000	Liters				
5/07	First Seal Coat of 80/100 Penetration Bitumen	1,090,000	Liters				
5/08	Inch Stone Chippings to First Seal Cost	18,300	Metric Tons				
5/09	Second Seal Cost of 80/100 Penetration Bitumen	953,000	Liters				
5/10	12 mm Inch Stone Chippings to Second Seal Cost	13,600	Metric Tons				
<i>Item No. 6 - Miscellaneous</i>							
6/01	Fencing	25,800	Linear M				
6/02	Fence Gates	6	Each				
6/03	Concrete Bus Pads	28	Each				
SUMMARY BILL OF QUANTITIES				TOTAL AMOUNT BID			
No.	Description			U.S. Dollars	Local Currency		
1.	General						
2.	Site Clearing						
3.	Earthworks						
4.	Culverts						
5.	Payment Structure						
6.	Miscellaneous						
GRAND TOTAL TENDER SUM – CARRIED TO FORM OF BID, PAGE 1							

**Attachment 2T – Memorandum from John F. Hicks, February 1, 1993,
Subject: Update and Reissuance of Africa Bureau Instructions on
Implementing Special Procurement Policy Rules Governing the
Development Fund for Africa (DFA**

RESERVED