

## **PART II - SPECIAL /PARTICULAR CONDITIONS OF CONTRACT**

### **1.1 Definitions**

- 1.1.1.4 “Form of Bid” is synonymous with “Letter of Tender”.
- 1.1.1.8 “Bid” is synonymous with “Tender”.
- 1.1.1.10 “Contract Data” is synonymous with “Appendix –A to Bid”.

*The following paragraph is added:*

- 1.1.1.11 “Programme” means the programme to be submitted by the contractor in accordance with Sub-Clause 8.3 and any approved revisions thereto.
- 1.1.2.2 “Employer” is synonymous with “Procuring Agency”  
Employer Representative is Chief Engineer, Sindh Coal Authority
- 1.1.2.9 “DB” is synonymous with “Committee”.
- 1.1.3.1 28 days is replaced by 7 days.
- 1.1.3.7 “Defects notification Period” is synonymous with “Defects Liability Period”.

### **1.3 Communications**

*Add the following paragraphs at the end of Sub-Clause:*

“Copies of all communications exchanged between the Employer/ Procuring Agency and the Contractor in connection with the Contract, shall be submitted to the Engineer by the sender of such communications.

The Contractor shall also transmit by covering letter to the Engineer, copies of all contractually relevant communications between the Contractor and its Subcontractor and vice versa.”

### **1.5 Priority of Documents**

*Replace (a) to (i) with following:*

- “a. The Contract Agreement;
- b. The Letter of Acceptance;
- c. Special Stipulations, Appendix – A to Bid;
- d. Particular Conditions of Contract, Part-II;
- e. Conditions of Contract for Construction - General Conditions MDB Harmonized Edition- March 2006; Part-I

- f Schedules including Priced Bill of Quantities and Form of Bid;
- g Special Specifications
- h Specification; NHA General Specifications (Dec 1998)
- i Drawings;
- j Any other documents forming part of the Contract.”

**1.6 Contract Agreement**

In the first line replace the figure “28” with the expression “14 working”.

**1.8 Care and Supply of Documents**

*At the end of this Sub-Clause add the following new paragraph:*

“The Contractor shall make available to the Engineer / his agents the approved drawings, shop drawings, bar bending schedules, specifications or any other document required during inspection and testing of the Works.”

**1.15 Inspections and Audit by the Bank**

Deleted

**2.1 Right of Access to the Site**

In the second paragraph, second line, after the word “possession of” substitute the entire text upto the end of paragraph with the following:

“as much of the Site as shall be required under programme of the Works submitted under Sub-Clause 8.3 (Programme).”

**2.5 Employer’s Claim**

In the last line of last paragraph, after the words “Payment Certificate”, add the following text:

“or from the encashment of Performance Security, ”

**3.1 Engineer’s Duties and Authority.**

*The following paragraph is added after duties:*

Procuring agency shall ensure that the Engineer’s Representative/Staff is a professional engineer as defined in the Pakistan Engineering Council Act 1975 (V of 1976)

**4.3 Contractor’s Representative**

*The following text is to be added after last line:*

The contractor's authorised representative and his other professional engineers working at site shall register themselves with the Pakistan Engineering Council.

#### **4.19 Electricity, Water and Gas**

*The entire text of Sub-Clause is deleted and substituted with the following:*

"Except as otherwise stated in the Contract, the Contractor shall be responsible for the provision of all supplies of electricity, water, Gas and other services as are required for carrying out the Works at the Site. Any apparatus and equipment required for the use of these services shall be arranged by the Contractor, at its own risk and cost."

#### **4.21 Progress Report**

In the second line of first paragraph after the word "Contractor", add the text "in the format acceptable to the Engineer/Employer"

In sub-paragraph (g), the word "and" appearing at the end is deleted.

In sub-paragraph (h) the full stop appearing at the end is substituted with a semi colon.

Add the following sub-paragraphs at the end of Sub-Clause with continuing order:

- "(i) Planned programme for the execution of the Works for the next two (2) months to enable the Engineer to determine its programme of inspection and testing;
- (j) Monthly summary of daily job record indicating weather conditions, deployment of Contractor's Equipment, labour employment (segregated by gender), local material procurement and material import, if any;
- (k) Salient contractual and project Information.

#### **6.5 Working Hours**

*Add the following paragraph at the end of Sub-Clause:*

"If as a result of carrying out the Works on holidays or locally recognized days of rest or at night or after the normal working hours under circumstances (b) and (c) herein above, the Employer incurs additional supervision cost of the Engineer, such cost on hourly basis shall after due consultation by the Employer and Contractor be determined by the Engineer and shall be paid to the Engineer/ Engineer's personnel by the Contractor."

#### **6.6 Facilities for Staff and Labour**

*The text of first paragraph is deleted and substituted with the following:*

“The Contractor shall provide and maintain suitable accommodation and amenities for all its staff and labour, employed for the purpose of or in connection with the Contract, including all fencing, water supply (both for drinking and other purpose), electricity supply, sanitation, fire prevention and fire fighting equipment, air conditioning, refrigerator, furniture and other equipment in connection with such accommodation or amenities. The Contractor shall provide appropriate facilities for children of laborers in the construction Camp Sites. On completion of the Works, unless otherwise agreed the temporary camps/housing provided by the Contractor shall be removed and the Site be reinstated to its original condition, all to the approval of the Engineer.

Notwithstanding the above following completion of the Works in case the Employer requires the Contractor not to remove/demolish the temporary-built camps/houses, then the relevant cost, as determined by the Engineer, shall be paid to the Contractor.”

#### **6.8 Contractor’s Superintendence**

*Add the following paragraphs at the end of Sub-Clause:*

“The Contractor’s superintending staff shall be qualified civil engineers or possess Diploma of Associate Engineer in Civil Engineering or civil technology depending upon the nature of assignment and have a working knowledge of English and Urdu and local language of the Site.

The Contractor’s superintending staff must be available at site when ever the Engineer’s representative or his subordinate staff related to construction supervision is inspecting and testing the Works as per Contractor’s daily inspection and testing schedule.”

#### **6.10 Records of Contractor’s Personnel and Equipment**

*The following paragraph is added:*

The Contractor shall, upon request by the Engineer at any time in relation to any item of hired Contractor’s Equipment, forthwith notify the Engineer in writing the name and address of the Owner of the equipment and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements set forth above.

#### **7.4 Testing**

*At the end of this Sub-Clause add a new paragraph as follows:*

“The Contractor shall give 24 hours prior notice to the Engineer’s representative according to the procedure mutually agreed between them for daily inspection and testing of works.”

*The following sub-clause 7.9 is added in (GCC):*

#### **7.9 Use of Pakistani Materials and Services**

The contractor shall, so far as may be consistent with the contract, make the maximum use of materials, supplies, plant and equipment indigenous to or produced or fabricated in Pakistan and services, available in Pakistan provided such materials, supplies, plant, equipment and services shall be of required standard.

#### **8.1 Commencement of Works**

*The last para is deleted and substituted with the following:*

The contractor shall commence the works on site within the period named in Appendix-A to Bid from the date of receipt by him from the Engineer of a written Notice to Commence. Thereafter, the contractor shall proceed with the works with due expedition and without delay.

#### **8.3 Programme**

*The following text is to be added after [Commencement of Works]*

The programme shall be submitted in the form of Bar Chart identifying the critical activities.

#### **8.11 Prolonged Suspension**

Replace 84 days by 120 days.

#### **12.3 Evaluation**

Delete the entire text of sub paragraph (a) (i), (ii), (iii), (iv) and the word “or” appearing before sub paragraph (b) of this sub clause.

Delete the word “(b)” of the sub paragraph (b) of this sub clause to read the text of 4th paragraph of this sub clause as follows:

However, a new rate or price shall be appropriate for an item of work if:

- (i) the work is instructed under Clause 13 [Variations and Adjustments]
- (ii) no rate or price is specified in the Contract for this item, and
- (iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract

*Add new sub clause 12.4 after sub clause 12.3 of GCC*

#### **12.4 Variations Changing by 30 Percent**

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 Clause 12 [Measurement and Evaluation] and
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sum under sub-clause 13.5 [Provisional Sums], Day-works under sub-clause 13.6 [Day-work] and adjustments of price made under Clause 13 [Variation and Adjustments], but not from all other causes, there had been addition to or deduction in Contract Price which when taken together are in excess of 30 percent of the “Effective Contract Price” (which for the purpose of this sub-clause shall be the Contract Price excluding the Provisional Sums and allowance for the Day-works, if any) then and in such event (subject to any action already taken under any other sub clause of this Clause 12 of General Conditions of Contract) 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 30 percent of the “Effective Contract Price”.

### **13.1 Right to vary**

In the last line of Para, after the word “Variation”, the word “in writing” is added.

### **13.3 Variation procedure**

In the tenth line, after the words “as soon as practicable” following is added:  
“and within a period not exceeding one-eighth of the completion time”

### **13.4 Payment in Applicable Currencies**

*Text of the Clause is deleted and replaced with the following:*

“The payment currency is Pakistani Rupee only.”

### **13.8 Adjustment for changes in cost**

The entire text is deleted and substituted as follows:

“The amounts payable to the Contractor, pursuant to Sub-Clause 14.6, shall be adjusted in respect of the rise or fall in the cost of materials only, and will be

paid to the contractor on those items mentioned in the **Appendix –C (B)**. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.”

#### **14.1 The Contract Price**

Sub-para (d) is deleted.

#### **14.2 Advance Payment**

*The Entire Text is deleted and replaced with following:*

The Employer if requested by the Contractor shall make an advance payment for mobilization and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of installments (if more than one) shall be as stated in the Appendix-A.

The Advance Payment (if required) shall be paid in two equal installments after the following conditions have been fulfilled.

Installment-1: 50% of the total amount of the Advance Payment.

- That the Contract Agreement has been signed by the Parties.
- The Contractor has submitted bank guarantee for the full amount of the advance payment in the form of irrevocable without recourse bank guarantee.
- The Contractor has submitted the Performance Security in the form as prescribe in Sub-Clause 4.2.

Installment-2: Remaining 50% of the total amount of the Advance Payment shall be paid on mobilization of Plant, Equipment and other resources at site by the Contractor to the satisfaction of the Engineer.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Appendix A, this Sub-Clause shall not apply.

The Contractor shall pay interest on the mobilization advance at the rate of 10% per annum on the advance.

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first installment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amount equal to the advance payment. This guarantee shall be issued by an entity and from within a Country (for other jurisdiction) approved by the Employer, and shall be in the form Annexed to the particular conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the payment certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

At any time, the bank guarantee shall be valid for an amount not less than the amount of the original advance payment less any partial repayment of that advance payment which may have been affected. The Contractor shall inform the guaranteeing bank, by letter, counter sign by the Employer, of the required amount of the guarantee from time to time. Reduction of the amount shall not be made without such authorizing letter.

Unless stated otherwise in the appendix A, the advance payment including interest shall be recovered in 5 equal installments starting from 3rd IPC and incase the number of bills is less than 5 then 1/5 of the advance inclusive of the interest thereon shall be recovered from each bill and balance together with interest be recovered from the final bill. It may be ensured that there is sufficient amount in the final bill to enable recovery of the mobilization advance.

If the advance payment has not been repaid prior to the issue of the taking over certificates for the works or prior to termination under clause 15 [Termination by Employer], Clause 16 [suspension and termination by Contractor] or Clause 19 [Force Majeure] as the case may be, the whole of the balance then outstanding shall immediately become due and incase of termination under Clause 15 [Termination by Employer] and Sub-Clause 19.6 [Optional Termination, Payment and release], payable by the Contractor to the Employer.

In the event that the amount of money certified and due to the Contractor under the contract at any time is less than the total of due repayments of advance payment, the balance of the due repayments shall be paid to the Employer by the Contractor within 7 days of demand by the Employer. If the balance is not so paid the Employer shall be empowered to call in sufficient of the advance payment bank guarantee to cover the said balance.

The employer shall be empowered to call in the guarantee in whole or in parts



if the Contractors defaults in the repayment for any reasons.

**14.5 Plants and Materials intended for Works**

The Whole Clause is deleted

**14.8 Delayed Payment**

This entire Sub Clause is deleted.

**15.2 Termination by Employer**

*The following Para is added at the end of the sub-clause:*

Provided further, that in addition to the action taken by the Procuring Agency against the Contractor under this Clause, the Procuring Agency may also refer the case of default of the Contractor to Pakistan Engineering Council for punitive action under the Construction and Operation of Engineering Works Bye-Laws 1987, as amended from time to time.

**15.6 Corrupt and fraudulent Practices.**

*The following text is to be added as 3<sup>rd</sup> paragraph:*

Successful Contractor has to provide Integrity Pact (for contracts worth Rs.10.0 million and above).

If the Contractor or any of his Subcontractors, agents or servants is found to have violated or involved in violation of the Integrity Pact signed by the Contractor as Appendix-L to his Bid, then the procuring agency shall be entitled to:

- (a) recover from the Contractor an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by the Contractor or any of his Subcontractors, agents or servants;
- (b) terminate the Contract; and
- (c) recover from the Contractor any loss or damage to the Procuring Agency as a result of such termination or of any other corrupt business practices of the Contractor or any of his Subcontractors, agents or servants.

The termination under sub-para (b) of this Sub-Clause shall proceed in the manner prescribed under sub-clauses 15.2 & 15.5 and the payment under Sub-Clause 15.4 shall be made after having deducted the amounts due to the Procuring Agency under Sub-Para (a) and (c) of this Sub-Clause.

**16.4 Payment on Termination**

Sub-paragraph (c) is deleted.

The following text is added in Clause 18.1 (GCC):

## **18.1 General Requirements for Insurances**

The Contractor shall be obliged to place all insurances relating to the Contract (including, but not limited to, the insurances referred to in Clauses 18.1,18.2,18.3,18.4) with Insurance Company having at least AA rating from PACRA/JCR in favour of the Employer//Procuring Agency.

Costs of such insurances shall be borne by the Contractor.

## **18.3 Employer's/ Procuring Agency's Risks**

Sub-Clause 17.3 (h) is deleted.

## **19.6 Optional Termination, Payment and release by the Employer**

Sub-clauses (c), (d) and (e) are deleted.

## **20.6 Arbitration**

*Text will be replaced as under;*

*Any dispute in respect of which:*

- (a) the decision, of the Dispute Board has not become final and binding pursuant to sub-clause 20.2, and*
- (b) amicable settlement has not been reached within the period stated in sub-clause 20.5, shall be finally settled, under the provisions of the Arbitration Act, 1940.*

The place of arbitration shall be Karachi, in Sindh Province.

## **Appendix : General Conditions of Dispute Board Agreement**

- a) On Page 70 Of The GCC Under Section 2 “General Provisions” Insert Word “Board” in the last line after text “..... and the Dispute”
- b) On Page 73 of the GCC under Section 6 “Payment” in the last line of third paragraph add text “with a copy to the Employer” after the word “Contractor”.
- c) On Page 73 of the GCC under Section 7 “Termination” at the end of the first paragraph add the text “and Clause 6” after the text “Clause 2”.