

Democratic Socialist Republic of Sri Lanka

**GUIDE TO PROJECT MANAGEMENT &
CONTRACT MANAGEMENT**

FOR

**INFRASTRUCTURE DEVELOPMENT
PROJECTS (Works)**

IMPLEMENTED BY THE

GOVERNMENT OF SRI LANKA

Ministry of Finance

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PREFACE

Government of Sri Lanka has implemented a large number of infrastructure development projects during past decades. Some of the projects so implemented experienced delays, cost overruns and disputes. This situation resulted in Government of Sri Lanka incurring additional costs, prolongation of social and environmental impacts during construction, depriving the general public of the use of infrastructure facilities for years and also underutilization of foreign funds.

Insufficient capacity in project management and contract management skills, including skills in dispute resolution processes within Project Management Units have been identified as a key contributory factors. Therefore, the Asian Development Bank approved a Technical Assistance Program (TA-8562 SRI) for the government of Sri Lanka on “*Capacity Development in Project Implementation for the Government of Sri Lanka*” in order to remedy the situation in December 2013 to enhance project and contract management capacity of the staff engaged in the implementation and execution of national infrastructure projects. The development of a Guide to Project Management and Contract Management (hereinafter referred to as the “GPMCM”) has been identified as one of the key TA outputs to impart knowledge on use of conditions of contracts using FIDIC and ICTAD forms of contracts in the implementation of civil works contracts.

The introduction of the GPMCM is timely, responding to a long felt need. In preparation of the GPMCM, the input of the relevant stakeholders with particular emphasis on the water sector has been considered by the consultants at the initial review. The GPMCM particularly intends to provide guidance to staff involved in the implementation and monitoring of infrastructure development projects, using FIDIC Multi-Lateral Development Banks harmonised version (FIDIC Pink Book) and financed by ADB. The Guide will also be of interest to members of Procurement Committees and Technical Evaluation Committees other staff in project management units. GPMCM has 3 three broader sections; (i) Introduction, Principles and Concepts of Contract Management; (ii) Contract Management Procedures; and (iii) forms, templates and specimen letters for each contract management action. Additionally the forms, templates and specimen letters described in item (iii) has been customised to projects needs and added as templates to the IT based project management tools developed on MS Share Point software platform, to facilitate Project and/or Contract Management. The Guide is intended to serve as a first reference point to project staff to manage projects effectively and efficiently. It is important to mention that the rights and obligations of the parties to a contract are not governed by this Guide but by the relevant contract signed by such parties.

The draft GPMCM was presented to various professional organizations and groups representing the construction industry and related government agencies including CIDA and their observations and suggestions for improvements have been incorporated into the preparation of the Guide. Users of the Guide are also invited for a half day workshop in November 2016 to provide their observations and/or suggestions for improvements for revisions and modifications.

I acknowledge the valuable contributions made by ADB staff in preparing this Guide especially Mr. Sarath Muthugala, Senior Procurement Specialist for structuring, peer reviewing and providing valuable comments to complete this Guide. Also appreciate the input provided by the team of consultants engaged under the TA specially Mr. Wijitha Fernando and Mr. T.M. Jayasekara who provided the technical inputs and the team of other consultants with diverse background. I also wish to thank the Country Director of ADB Ms. Sri Widowati and her staff while extending my gratitude to all others who contributed in numerous ways in making the publication of this GPMCM a reality.

In the end, I appreciate the invaluable guidance provided by Mr. P.Algama Director General Department of Public Finance and wish to mention that without his support publication of this GPMCM would be a difficult task.

R.H.S Samarathunga
Secretary to the Treasury
Ministry of Finance

LIST OF ACRONYMS & ABBREVIATIONS

ADB	Asian Development Bank
Adl.GM	Additional General Manager
AGM	Assistant General Manager
BOD	Board of Directors
CA	Contract Administration
CB	Cost Baseline
CAPC	Cabinet Appointed Procurement Committee
CATB	Cabinet Appointed Tender Board
CE	Chief Engineer
CEO	Chief Executive Officer
CEB	Ceylon Electricity Board
CIDA	Construction Industry Development Authority (successor of ICTAD)
CM	Contract Management
CMS	Contract Management Service
C. Mgr	Contract Manager
CMC	Colombo Municipal Council
CMF	Contract Management Forms
GPMCM	Guide to Project and Contract Management Guide
DGM	Deputy General Manager
DPMM	Department of Project Management and Monitoring
EA	Executing Agency
ERD	External Resources Department- Ministry of Finance and Planning
FIDIC	Fédération Internationale des Ingénieurs-Conseils (Federation of Consulting Engineers)
GM	General Manager
GOSL	Government of Sri Lanka
IA	Implementing Agency
ICTAD	Institute of Construction and Training Development (predecessor of CIDA)
IFB	Invitation for Bids
INDIS	Integrated National Development Information System
MIS	Management Information System
MOE	Ministry of Education
MOFP	Ministry of Finance and Planning
MPCLG	Ministry of Provincial Councils and Local Government
MTC	Ministry Tender Committee
MUDWSD	Ministry of Urban Development, Water Supply & Drainage
NPD	National Planning Department
NWSDB	National Water Supply and Drainage Board
PC	Procurement Committee
PD	Project Director
PM	Project Manager
PMU	Project Management Unit
QMS	Quality Management Systems
RFP	Request for Proposal
RFI	Request for Information
SC	“S” Curve
SLS	Sri Lanka Standards

SLRM	Sri Lanka Resident Mission
TA	Technical Assistance
WB	World Bank

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Section 1

Introduction, Principles and Concepts

Section 1
Introduction, Principles and Concepts

Section 2
Procedures to be Followed

Section 3
Forms and Formats

1 SCOPE AND PURPOSE OF THE CONTRACT MANAGEMENT GUIDE (GPMCM)

This Volume comprises of three sections;

Section 1 Introduction, Principles and Concepts of Contract Management.

Section 2 Procedures needed to guide users for achieving effective contract management which encompasses procedures structured to follow the flow of important activities in each stage of a typical contract, and includes a discussion of, likely scenarios which may arise at each stage; together with guidelines to manage such situations.

Section 3 Forms, Templates and Formats including sample letters and checklists.

1.1 Purpose

- i. Assist to define responsibility and authority for specific activities in contract management;
- ii. Assist project staff to ensure compliance with contractual obligations, when carrying out contract management functions;
- iii. Ensure uniformity in contract management activities among different projects in different organizations;
- iv. Prevent recurrence of problems/weaknesses through amending of procedures to include corrective/preventive measures and provide opportunities for application of lessons learned;
- v. Facilitate training of project staff in project/contract management, enhancing their ability to apply proper contract management practices;
- vi. Adopt as a part of a procedure Guide if the organization is to establish a Quality Management System;
- vii. Improve the ability of project staff to take actions efficiently and respond to contractual correspondences promptly in accordance with the terms of the contract;
- viii. Assist project staff to safeguard Employer's interests and fulfill contractual obligations of the Employer avoiding unnecessary claims, delays, additional costs, and disputes; and
- ix. Assist the Implementation Agency to complete the contract within the time provided, budget allocated and quality specified.

2 PROFESSIONAL STANDARDS OF CONDUCT

Public Officers engaged in the task of project management and implementation need to abide by several statutory provisions and codes of conduct that regulate and govern their conduct in respective professional capacities, such as the Establishment Code, Financial Regulations, the Bribery Act, National Procurement Guidelines etc. more fully described hereinafter.¹

¹In addition public officers must ensure that they comply with the anti-corruption and integrity principles and guidelines of the respective multi-lateral and bi-lateral donors.

2.1 Doctrine of Public Trust

Public officers must ensure that public resources are used in a manner that protects the interest of the public.² This concept is an application of the Public Trust Doctrine (that the state is the trustee for the protection of natural and national resources, the public are the beneficiaries and that the powers conferred on public officials and bodies are held in trust for the public) which has been recognized by the Sri Lankan courts in several leading judgments.³

All Public officials are thus required to act honestly and impartially particularly those involved in Procurement and Contract Management, must therefore, avoid acts which are improper and ensure adherence to the highest level of professionalism in discharging their duties.⁴

2.2 The Establishment Code of the Government of Sri Lanka (E Code)

The Establishment Code (E code) sets forth the standard of conduct of public officials. A breach of the provisions of the E Code warrants disciplinary inquiry of such officer.

The provisions of the E Code, prohibits public officers and families from receiving certain types of gifts, whether in a direct or indirect form, and whether in the shape of money, goods, free passages, services, unusual discounts on the cost of goods supplied or services rendered. Furthermore the officer is responsible for the acts of the members of the family.

The other offences include bribery and corruption, misappropriation of government resources or cause destruction or depreciation of resources of the government willfully or negligently.⁵

2.3 Code of Best Practices for Public Enterprises

The Code of Best Practices for Public Enterprises issued by the Ministry of Finance states that “as investor on behalf of the public, the Government has a duty to ensure that a Public Enterprise delivers value for money and maximum financial returns, subject to the social considerations prescribed in policy objectives” which is reflective of the doctrine of public trust.

2.4 The Bribery Act No: 11 of 1954 & amending Act No: 40 of 1958 (Bribery Act)

The Bribery Act was enacted with the idea of containing bribery and corruption within the public sector.⁶

The amending Act permits the offence of bribery to be established through circumstantial evidence even if there is no direct evidence to prove acceptance of gratification.

If any public servant (as defined therein) uses any information coming to his knowledge by virtue of his office as a public servant or participates in the making of any decision by

²Also refer “The Offences against Public Property Act No: 12 of 1992” amended by Act No: 28 of 1999.

³In *Premchandra v Jayawickreme*, [1994] 2 SLR 90, Supreme Court held that “There is no absolute or unfettered discretion in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted.”

In *WatteGederaWijebanda* case (2009) 1 SLR 337, *Tilakawardana J* held that upon accepting public office public officers are vested with the trust of the people (who have committed the care and preservation of resources to the state as the guardian of such resources) hence must exercise those powers in public interest.

⁴Also refer *Samarathne, D* Public Trust Doctrine: The Sri Lanka Version ICES (Colombo, 2010)

⁵First Schedule E Code.(Volume11).

⁶Also refer “Bribery and Corruption in Sri Lanka: Strengthening the Institutional Framework” (White Paper) August 2007, USAID and the website of Transparency International - www.tisrilanka.org.

virtue of his office as a public servant with the intent or the knowledge that a wrongful benefit or loss will be caused to the Government is liable to be charged with corruption.

It is an offence under the Bribery Act, if any public servant, solicits or accepts any gratification as an inducement or a reward for his giving assistance or using influence in the promotion of the procuring of any contract, or its execution or in the payment of the price or consideration in respect thereof.

2.5 Declaration of Assets and Liabilities Law consisting of Acts No: 1of 1975, No: 29 of 1985 and Act No: 74 of 1988

The objective of the Declaration of Assets and Liabilities Law consisting of Acts No: 1of 1975, No: 29 of 1985 and Act No: 74 of 1988 is to monitor the acquisition of wealth by public servants politicians and others (vide section 2) through an act of bribery and corruption.

2.6 International Agreements

Sri Lanka is a signatory to the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime. Sri Lankan courts have held that statutes may be interpreted in the context of country's obligations under International Law and Covenants.

2.7 National Procurement Guidelines

National Procurement Guidelines 2006 as amended from time to time which apply to the procurement of goods, service and works with public funds or any other source of including projects funded by bi-lateral or multi-lateral funding agencies sets forth ethical standards that must be adopted by government ministries, provincial councils, local authorities, government corporations, government owned companies etc. as defined therein. The guidelines prohibit an officer engaged in a procurement action to abuse their powers to derive benefits for one's self, family or business associates and to derive personal gain from such a procurement action. Such officers are prohibited from accepting gifts or inducement which may impact or influence their decision making in an objective manner.

2.8 Conflict of Interest

A conflict of interest situation may arise when a public officer exploits his position in office for his personal benefit (often pecuniary) and thereby undermines his duty to act for the benefit of the public or in the public interest.

The E code contains provisions which prohibit public officers from acting in a manner that compromises his office and may bring his personal interest into conflict with his public duty⁷.

Chapter XXIV of the E Code pertains to disclosure requirements relating to acquisition of land, investments, shares and other interests and declaration of assets and liabilities. A breach warrants a disciplinary action.

Code of Best Practices for Public Enterprises stipulates disclosure requirements pertaining to related party transactions and any other transactions or matters of public officers (Government Ministers and officials, members of the Public Enterprise's Board of

⁷Refer Volume II of the E-Code. Chapter XLVII, section 1.4.

Directors and senior management) who have directly or indirectly a material interest on any matter or where there is a conflict of interest.

2.9 Code of Best Practices in Corporate Governance for Public Enterprises

The Ministry of Finance has issued a Code of Best Practice in Corporate Governance for Public Enterprises in Sri Lanka which is applicable to Public Enterprises and Statutory Boards. One of its main objectives is to achieve “greater accountability and transparency”.

The Code dictates that the Board of Directors of these entities have a “fiduciary duty” to perform their duties in good faith and in a manner that they believe to be in the best interests of the enterprise, shareholders, other stakeholders and the public.

In addition, certain State agencies have special conflict of interest provisions that apply to their employees. These laws, rules, or policies should be reviewed and followed by agency staff.⁸

2.10 Public Contracts Act No: 3 of 1997⁹

2.10.1 The Provisions of the Act applies to every public contract¹⁰ where the cost of contract exceeds five million rupees.¹¹ The Act also applies to public contracts which have not reached finality.

2.10.2 The Act prohibits any person from offering inducements, gratifications, scholarships or rewards or any other form of benefit and making misrepresentations, transferring any movable or immovable property, whether in Sri Lanka or elsewhere to obtain benefits in the award of tenders and public contracts.¹²

3 DIFFERENT FORMS OF CONTRACTS APPLICABLE

The GPMCM is based on the FIDIC Multilateral Development Bank Harmonized Edition June 2010, hereinafter referred to as **Pink Book**.

There are other forms of contracts that have been used in projects recently awarded by the GOSL, such as;

- FIDIC Conditions of Contract for Construction- 1999 (**Red Book 1999**);
- ICTAD Conditions of Contract for Major Contracts (**ICTAD/SBD/2 – Second Edition – January 2007**);
- ICTAD Conditions of Contract for Contracts (**ICTAD/SBD/1– Second Edition – January 2007**);
- ICTAD Conditions of Contract for Minor Contracts (**ICTAD/SBD/3 – Second Edition – January 2007**);

⁸Refer Section 4. For example, the National Water Supply and Drainage Board Law No: 2 of 1974 as amended and the Ceylon Electricity Board Act No: 17 of 1969 as amended stipulate that a Board member is required to disclose the nature of his interest in any contract made or proposed to be made by the NWSDB or CEB as the case may be.

⁹Refer Section 2(2) of the preamble Act for categories of contract excluded from application of the provisions of this Act.

¹⁰Refer Section 2(2) of the Preamble to the Act for categories of contract excluded from application of the provisions of this Act.

¹¹The Act requires any person who acts as an agent or sub agent, representative or nominee for or on behalf of any tenderer to register himself and such public contract. (Vide sections 8 & 10).

¹² Refer section 17.

- FIDIC Conditions of Contract for Plant and Design-Built - 1999 (**Yellow Book 1999**);
- Form of International Contract for Process Plant Construction published by the Engineering Advancement Association (**ENAA**) of Japan – in ADB's User's Guide to Procurement of Plant Design, Supply and installation SBD – May 2014;
- Design & Build form of contract (**ICTAD/SBD/4** – First Edition – May 2003) which has been published by ICTAD (rarely used for GOSL projects); and
- Conditions of contracts used in different Standard Bidding Documents (SBD's) of funding agencies for national projects implemented by GOSL for small projects.

Construction Industry Development Act No. 33 of 2014 requires ICTAD Standard Documents to be used for contracts with all contractors and consultants, except for contracts, GOSL owned entities entered into with foreign contractors or foreign consultants. This may give rise to conflicting situations with funding agency requirements unless resolved. Please refer Annex 4 for requirements of funding agencies.

FIDIC Red Book, Pink Book and ICTAD/SBD/2 forms of contracts usually require re-measurement of completed works for payment. However FIDIC Yellow Book and ENAA forms of contracts usually stipulate lump sum payments linked with milestone completion.

FIDIC and ICTAD forms of contracts for Employer designed works have a provision for allocating limited design responsibility to the contractor. FIDIC and ICTAD forms of contract for design and build for the works designed by the contractor, allocate limited design responsibility to the Employer.

Despite the availability of several forms of contract, ADB, JICA and WB prefer the use of FIDIC Pink Book for construction contracts designed by the Employer.

The FIDIC Pink Book is based on the FIDIC Red Book which has been customized to suit the requirements of funding agencies. Since there is no MDB harmonized version for design, supply and installation contracts,¹³ ADB, JICA and WB prefer the use of ENAA forms of contract for plant design, supply installation contracts. ENAA forms of contracts demonstrate good contracting practices, fair sharing of risk and responsibilities and have been largely tested in developed nations. Under ENAA conditions contracts, contractor assumes major part of design, supply and installation responsibility and associated risks.

FIDIC also has recommended using the Yellow Book for plant, design and build contracts with customized Particular Conditions of Contract to make the contracts compatible with changes applied in the Pink Book to suit requirements of MDB's. This facilitates the EAs/IAs to use internationally recognized standard conditions of contract and forms acceptable to such funding agencies.

4 CONTRACT MANAGEMENT

Contract Management is the process of ensuring the fulfillment of contractual responsibilities/obligations of each party in an efficient and effective manner, and the contractual entitlements of parties are duly established and secured during the entire life cycle of a contract.

¹³JICA is currently in the process of developing such MDB harmonized version for design and build contracts.

The terms “Contract Management” and “Contract Administration” are often used interchangeably. In the GPMCM, the term “Contract Administration” is used to denote contractual functions which are to be performed by an Engineer to the Contract upon the issuance of the Letter of Acceptance continuing through and ending upon the issuance of the Performance Certificate. Contract Management with respect to an Employer should be carried out by the Project Director/Manger representing the EA/IA. FIDIC and most other forms of contracts require an Engineer to perform certain contractual functions which are usually termed as Contract Administration.

4.1 Contract Management Procedures

Contract Management/ Administration Procedures cover four key areas, namely;

- i. Mobilization;
- ii. Execution;
- iii. Completion; and
- iv. Closure of Contract.

4.2 Key Principles of Contract Management

Proper management of activities during the initial stage of a contract, including mobilization and commencement of the contract and to ensure the following:

- i. Parties meet targets within key dates or periods specified in the contract;
- ii. Manage, design changes, variations and other changes properly;
- iii. Parties fulfill their contractual, legal and regulatory obligations, including notification requirements and making payments;
- iv. Identify risks of cost overruns and prolongation of contract period are identified through proper monitoring and their effects minimized by providing on time information and alerts to take adequate and timely actions;
- v. Manage claims for additional cost and time in an efficient and effective manner and prompt action is taken to determine entitlement;
- vi. Maintain contractual records including bonds and guarantees, insurance policies, contractual correspondences, and records of resources utilized and reports with regard to quality, progress and other aspects which are connected to performance of the contract;
- vii. Establish dispute resolution mechanisms and resolution of disputes, through multi-tiered dispute resolution processes in accordance with the contract;
- viii. Effect contract suspension and/or termination, where absolutely necessary in accordance with the provisions of the contract;
- ix. Make necessary amendments to a contract to restructure a contract, only upon following the proper procedure and obtaining necessary approvals;

- x. Carry out contract close-out after all payments have been made under the contract and the works executed and completed under the contract are taken over; and
- xi. Maintain open and effective communication between all parties using appropriate channels and means, and providing feedback to enhance contract performance. These could be in the form of meetings, discussions, site visits, and correspondences.

5 **CONTRACT MANAGEMENT ACTIVITIES**

The following are the key activities involved in execution of a Contract.

5.1 **Letter of Acceptance/Award**

Letter of Acceptance also referred to as the “Letter of Award”, is legally considered as the Employer’s formal acceptance of an offer (bid/tender) made by the Contractor, thus forming a valid and binding contract between parties when acknowledged its receipt by the Contractor.

The FIDIC MDB Pink Book expressly states that if there is no such Letter of Acceptance, then the expression “Letter of Acceptance” must be construed to read as the Contract Agreement and the date of the Letter of Acceptance must be construed to read as the date on which the “Contract Agreement” was signed. The Letter of Acceptance is ranked second in priority amongst the documents constituting the Contract.

Issuance of Letter of Acceptance/Award marks the interface between the procurement stage and construction stage of the project.

5.2 **Contract Agreement**

Contract Agreement is the document with highest priority amongst the documents constituting the Contract. Contract Agreement specifies terms and conditions of the contract. The purpose of the terms and Conditions of a contract is to identify and allocate risks and responsibilities between the parties to the Contract.

Construction Contracts provide for the remedies for breach of its terms/conditions or liabilities arising out of occurrence of specified events. Construction contracts usually include terms and conditions to appoint and authorize a third party designated as the Engineer to carry out certain functions and administer a contract on behalf of the Employer. Under certain forms of contract, a party/person carrying out the duties of the Engineer is designated as the Contract Administrator, Project Manager or Architect.

The General Conditions of Contract which should be read with Particular Conditions of Contract constitute the Conditions of Contract. Particular Conditions which is higher in priority than General Conditions, may vary, amend or add in to the General Conditions of Contract to the extent detailed in the Particular Conditions. Hence, care must be taken to draft the Particular Conditions so as not to create any ambiguity or inconsistency.

Unless the Particular Conditions state otherwise FIDIC and ICTAD form of Contracts require the parties to enter into a Contract Agreement within 28 days after the receipt of the Letter of Acceptance by the Contractor. Parties however have the liberty to agree otherwise.

Stamp Duty and other statutory charges if any related to contract execution has to be borne by the Employer, unless otherwise specified in a contract. In ICTAD/SBD/02, the

Contract Agreement specifically states that the preparation of the Contract Agreement is the responsibility of the Employer.

The Contract Agreement shall be signed by authorized representatives of the Employer and the Contractor, who shall have such authority to sign such Contract Agreement through a written instrument such as power of attorney, board resolution if the Contractor is a company, or if it's a joint venture agreement, the JV agreement must indicate the signing authority.

General principles applicable to contract law in Sri Lanka (offer and acceptance, legality, breach of contract, types of damages, and interpretation of contract) are described in detail in Annex 1 for further reference.

5.3 Documents Constituting a Contract

Priority of documents is defined in the Contract Agreement.

Contract documents which constitute the contract between parties shall comprise the following documents (as per FIDIC Pink Book) and their order of priority shall be in descending order in the list, i.e. the documents listed in the top of the list have highest priority for the purpose of interpretation:

- i. Contract Agreement.
- ii. The Letter of Acceptance.
- iii. Memorandum of Understanding (if any).
- iv. The Letter of Tender.
- v. The Addenda.
- vi. The Particular Conditions of Contract. [– Part A]
- vii. [The Particular Conditions of Contract. [– Part B]
- viii. The General Conditions of Contract.
- ix. The Specifications/[Employer's Requirements].
- x. The Drawings.
- xi. The completed Bill of Quantities/ Schedules.
- xii. The Contractor's Proposal and any other documents forming part of the Contract.
- xiii. Supplementary Information.

5.4 Commencement of Contract

Commencement of the Contract shall be considered as the Commencement Date defined in the Conditions of Contract and Time for Completion of the Contract shall be calculated from such Commencement Date. The Contractor shall commence the execution of the Works as soon as reasonably practicable after the Commencement Date.

Different forms of Contract give different definitions for the Commencement Date.

The Pink Book defines the Commencement Date¹⁴ as the date specified in the Particular Conditions of Contract or the date that the Engineer instructs the Contractor to commence the Works upon the satisfaction of the conditions precedent stipulated in Section 8.1(a) to (d) of the Pink Book.

¹⁴Refer Section 8.1 of the Pink Book.

If the Engineer's instruction to commence the Works and the notification are not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor is entitled to terminate the Contract.¹⁵

The FIDIC Red Book and Yellow Book stipulate that the Commencement Date shall be the date notified to the Contractor by the Engineer and that date shall be within 42 days upon the receipt of the Letter of Acceptance by the Contractor, unless otherwise stated in the Particular Conditions of Contract. The Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date.

The ICTAD/SBD/02 stipulates that the Commencement Date shall be the date notified to the Contractor by the Engineer. The commencement date must be within 14 days upon the receipt of the Letter of Acceptance by the Contractor and notice of commencement must not be less than 7 days, unless otherwise stated in the Particular Conditions of Contract.

The ICTAD Conditions of Contract for Design & Build 2003 (ICTAD/SBD/04) stipulates that the Start (Commencement) Date shall be 14 days after the Letter of Acceptance.

5.5 Employer's Financial Arrangements

The obligation to provide funding assurance to the Contractor is a mandatory requirement stipulated in the FIDIC Pink Book¹⁶. The Employer is required to provide reasonable evidence to the Contractor of having made financial arrangements to pay the contract price, prior to the Commencement Date and also upon a request of the Contractor thereafter within 28 days. This ensures availability of funds to pay the advance payments, interim payments and the final payment constituting the Contract Price as stipulated in Section 14.

Loan/grant agreements entered into between the GOSL and the funding agency, budgetary allocations and/or an assurance from the GOSL are examples of such financial arrangements. If any notice of suspension of disbursement of funds has been received the Employer from such funding agencies, it is required to give notice of same to the Contractor forthwith.

In the FIDIC Red Book and the Yellow Book, the Employer is only obliged to provide such evidence of financial arrangements within 28 days of receipt of any such request from the Contractor.

ICTAD contract documents do not stipulate any obligation on the Employer to provide evidence of his financial arrangements to the Contractor.¹⁷

5.6 Appointment of the Engineer

The Employer shall appoint a person to act as the Engineer. The Engineer must be named in the Contract Data (as per FIDIC, MDB version and ICTAD conditions of contracts) or Appendix to Tender (FIDIC Red and Yellow books 1999 versions) or be subsequently appointed in writing by the Employer after the award of Contract.

The Engineer is responsible for administering the Contract and supervision of the

¹⁵ Refer Section 16.2 (h) of the Pink Book.

¹⁶Refer Section 2.4 of the Pink Book

¹⁷Refer item i of the subparagraph A3.8.2

execution of the Works. The Engineer is not a party to the contract. The Engineer may be either appointed as an individual or as a company which will in turn appoint an individual to carry out the duties of the Engineer in the name of the company.¹⁸

The Engineer does not have the authority to amend the Contract nor has authority to relieve either party of any duties, obligations or responsibilities under the Contract.

FIDIC Pink Book imposes more stringent conditions on the Engineer's scope of authority. The Engineer is mandatorily required to obtain the specific approval of the Employer under certain circumstances as defined in the Contract which include instructing variations, agreeing or determining extension of time and additional costs under the Sub-Clause 4.12 [Unforeseeable Physical Conditions] and approving a proposal for Variation submitted by the Contractor. However, if an emergency occur affecting safety of life or the works or of adjoining property the Engineer is permitted to instruct the Contractor to do such things as may be required under the circumstances to abate or reduce such risks.

In the FIDIC Red Book and Yellow Book the Engineer is required to obtain the approval of the Employer only for any matter and to the extent as may be specified in the Particular Conditions.

In ICTAD/SBD/02 the matters for which the Engineer must obtain the Employer's approval must be specified in Contract Data. There is also a responsibility cast upon the Employer not to impose any other constraints on the Engineer's authority unless agreed to with the Contractor.

5.7 Defects Notification Period

Defect Notification Period is defined in FIDIC forms of contracts as the period for notifying defects in the Works or a Section of the Works (as the case may be) calculated from the date on which the Taking-Over Certificate is issued for the Works or a Section of the Works. FIDIC Conditions of Contract imposes a time restriction for the Defect Notification Period to a maximum of two years. Similar provisions are incorporated in ICTAD/SBD/02.

During the Defects Notification Period, the Engineer may request the Contractor to identify the cause of a defect. In such event, the Contractor is required to investigate the cause, using design verification, investigation and/or testing, under the direction of the Engineer. The cost of such search/investigation shall be at the cost of the Contractor if the cause of such defect is attributable to the Contractor. Similar provisions are included in ICTAD/SBD/02.

6 CONTRACT PERFORMANCE

6.1 Contractor's Responsibilities

The Contractor is required to design (if specified), execute and complete the Works in accordance with the quality standard prescribed in the Specifications/Employer's Requirements, within the Time for Completion specified in the Contract or as extended under the terms of the Contract and within the Contract Price stated in the Contract or agree/determine by the Engineer subject to making adjustments in accordance with the Contract.

¹⁸For an example, in most of the projects where the NWSDB is the Implementing Agency, the General Manager/NWSDB is named as the Engineer to the Contract while for other Contracts a Consultancy company is either named in the Contract as the Engineer or is subsequently appointed as the Engineer.

The Contractor is required to complete any work which is outstanding on the date of a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer.

The Contractor is also required to complete any remedying of defects or damage, which may be notified by the Employer or the Engineer on or before the expiry date of the Defects Notification Period for the Works or Section of the Works (as the case may be).

Where the defect or damage is attributable to the Contractor, (i.e. any design for which the Contractor is responsible, plant, materials, workmanship not being in accordance with the Contract or failure by the Contractor to comply with any other obligation) the defect or damage must be remedied at the risk and cost of the Contractor.

FIDIC and ICTAD forms of Contract permits the Contractor to remove from the site with Employer's consent, defective or damaged plant which cannot be repaired expeditiously on Site, subject to the enhancement of the Performance Security or by providing other appropriate security.

The Contractor is required to comply with any other contractual requirements, applicable laws and regulations in performing the Contract.

6.2 Employer's Rights

The Employer is entitled to extend the Defects Notification Period for the Works or a Section of the Works. The Employer may also give notice for Employer's Claims, if and to the extent that the Works, Section of the Works or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended because of a defect or damage attributable to the Contractor.

If the Contractor fails to remedy any defect or damage within a reasonable time or by the date notified by the Employer, the Employer may:

- i. Carry out the work himself or by others and recover the costs reasonably incurred by the Employer from the Contractor;
- ii. request the Engineer to agree or determine a reasonable reduction in the Contract Price to set off the costs that would be reasonably incurred to remedy the defect or damage; or
- iii. if the defect or damage deprives the Employer of substantially the whole of the Works or any major part of the works, the Employer is entitled to terminate the entire Contract as a whole, or in respect of such major part which cannot be put to the intended use due to such defect or damage. In these circumstances the Employer is entitled to recover all sums paid for the works or four such part. In addition the Employer is entitled to financing costs, dismantling costs and site clearing costs.

6.3 Performance Certificate

The Engineer shall issue the Performance Certificate to the Contractor with a copy to the Employer, within a stipulated period after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter.

The Engineer may withhold the Performance Certificate if the Contractor has failed to

submit all the Contractor's Documents and complete and test all the Works, including remedying any defects and damages.

In ICTAD/SBD/02, the Performance Certificate must be issued within 28 days after the expiry of the Defects Notification Period or soon thereafter subject to the fulfilment of the Contractor's obligations under the contract.

7 CLOSURE OF A CONTRACT

A contract can only be closed or ended by:

- i. Performance of the contract;
- ii. Termination of the contract;
- iii. Occurrence of an event categorized under Force Majeure;¹⁹
- iv. Amending the contract with mutual agreement of parties; and
- v. A decision of a competent court having jurisdiction over the contract.

8 CONTRACT ADMINISTRATION

Contract Administration involves duties, functions, responsibilities and obligations assigned to the Engineer to the Contract, specified in or implied from the Contract.

8.1 Key Contract Administration Functions To Be Performed By The Engineer

Following Contract administration functions are to be performed by the Engineer in accordance with the General Conditions of Contract:

- i. Issue instruction to commence the Work;
- ii. Notify the Employer and the Contractor of assignment of duties and delegation of authority to a Resident Engineer and other Engineer's Assistants;
- iii. Notify the Employer and the Contractor of revocation of assignment of duties and delegation of authority, if required;
- iv. Review the Contractor's work Program and if necessary notify the contractor of the extent to which it does not comply with the Contract;
- v. Monitor the progress of the works using the current work Program;
- vi. Notify the Contractor if the Program fails to comply with the Contract, actual progress is too slow to complete within the Time for Completion or actual progress has fallen (or will fall) behind the current Program due to an event for which the Contractor is responsible and ensure that the Contractor submits a revised Program;
- vii. Issue necessary clarification or instruction to the Contractor when there is any ambiguity or discrepancy in the documents;

¹⁹Refer Article 9.3.

- viii. Issue the Contractor instructions and additional/modified Drawings which are necessary for the proper execution of the Works and the remedying of any defects;
- ix. Review Contractor's Documents and make comments if they are not complying with the Contract;
- x. Give notice and particulars to the Contractor of Employer's claims for any payments or for extension of the Defect Notification Period within the time stipulated;
- xi. Effect consultation with the Parties to reach agreement on certain matters in accordance with the Contract and if agreement is not achieved, to make a fair determination. Notifying Parties of any agreement reached or determination made;
- xii. Manage Variations including identifying, initiating, instructing, approving and valuating of Variations;
- xiii. Effect certification of Payments including advance, Interim and Final Payment Certificates within the periods stipulated in the Contract;
- xiv. Correct or modify any previous Payment Certificate if necessary;
- xv. Grant prior consent for Subcontractors;
- xvi. Grant prior consent for appointment of or revoking of the appointment of the Contractor's Representative;
- xvii. Notify the Contractor of the locations, coordinates of grid points and levels of benchmarks for reference if they are not specified in the Contract;
- xviii. Audit the Contractor's quality management/assurance system;
- xix. Monitor the Contractor's resources including Equipment, Materials and personnel. Granting consent for removing any major item of equipment from the site when not required;
- xx. Ensure that the Contractor takes all reasonable steps to protect the environment and to mitigate damage and nuisance to people and property. Also ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws;
- xxi. Review Monthly Progress Reports submitted by the Contractor and make comments if not complying with the requirements stipulated in the Contract.
- xxii. Agreeing/disagreeing to additional working areas obtained by the Contractor;
- xxiii. Issue instructions for dealing with fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site;
- xxiv. Issue instructions to the Contractor to employ nominated Subcontractors if required;

- xxv. Ensure that the Contractor takes all reasonable steps to maintain the health and safety of the Contractor's Personnel;
- xxvi. Ensure that the Contractor provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work;
- xxvii. Ensure that the Contractor's Personnel are appropriately qualified, skilled and experienced in their respective trades or occupations. Also ensure that the Contractor's Personnel who are incompetent, negligent or prejudicial to safety, health, or the protection of the environment;
- xxviii. Accept, review, verify and maintain, returns for deployment of the Contractor's Personnel and Equipment;
- xxix. Ensure that the Contractor executes the Works and provide materials and plants in compliance with the Contract and in accordance with recognized good practices;
- xxx. Grant prior consent for materials which are to be used in the Works;
- xxxi. Ensure the quality of Works by carrying out examination, inspection or testing of any works and reject any Plant, Materials or workmanship which is defective or otherwise not complying with the Contract;
- xxxii. Instruct the Contractor to remove and replace/re-execute any Plant, Materials or works which is not in accordance with the Contract;
- xxxiii. Grant extension of time for completion upon evaluation of a claim for delays suffered due to an event for which the Contractor is not responsible, subject to the Contractor's timely notification and prior approval of the Employer if specified under the Contract;
- xxxiv. Instruct suspension of the progress of part or all of the Works;
- xxxv. Give permission to proceed after a suspension of works;
- xxxvi. Instruct the Contractor of the date or dates on which Tests on Completion to be carried out;
- xxxvii. Review the results of the Tests on Completion and instruct retesting if the Works, or a Section, fail to pass the Tests on Completion;
- xxxviii. Issue Taking-Over Certificate to the Contractor, stating the date on which the Works/Section were completed in accordance with the Contract, except for certain minor outstanding works and defects which will not substantially affect the use of the Works/Section for their intended purpose or reject the Issuing of Taking-Over Certificate, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued;
- xxxix. Instruct the Contractor to complete any outstanding work remaining at the time of issuing the Taking-Over Certificate, within a reasonable time;
- xl. Notify the Contractor, on behalf of the Employer to remedy any defect or damage within the Defects Notification Period;

- xli. Notify the Contractor promptly, on behalf of the Employer if remedying of any defect or damage is not attributable to the Contractor;
- xlii. Agree or determine a reasonable reduction in the Contract Price when the Contractor fails to remedy any defect or damage by the notified date;
- xlili. Notify the Contractor within 28 days after the defect or damage is remedied, to repeat of any tests described in the Contract, if there is any doubt regarding the performance of the Works;
- xliv. Direct the Contractor to search for the cause of any defect;
- xlvi. Issue the Performance Certificate to the Contractor within 28 days after the latest of the expiry dates of the Defects Notification Periods when the Contractor fulfills all his obligations in accordance with the Contract;
- xlvi. Notify the Contractor when any part of the Works are to be measured;
- xlvi. Agree or determine the Contract Price by evaluating each item of work;
- xlvi. Derive new rates or prices in accordance with the Contract; and
- xlix. Instruct the Contractor to execute any works and/or purchase any Plant, Materials or services under Provisional Sums:
 - a) Instruct the Contractor to execute any variation involving work of a minor or incidental nature on day work basis;
 - b) Review the Day Work records/statements submitted by the Contractor and certify if they are correct;
 - c) Certify for payment to the Contractor the first half of the Retention Money, when the Taking-Over Certificate is issued for the Works;
 - d) Certify for payment to the Contractor the second half of the Retention Money, after the latest of the expiry dates of the Defects Notification Periods;
 - e) Notify the Contractor through a Notice to Correct, to remedy failure of the Contractor to carry out any obligation under the Contract within a specified reasonable time;
 - f) Review "as-built" documents and, if applicable, operation and maintenance Guides and notify if they not complying with the Contract;
 - g) Agree or determine the value at termination when the Employer terminates the Contract due to default of the Contractor;
 - h) Determine the value of the work done and issue a Payment Certificate when the Contract is terminated due to a Force Majeure event;

- i) Manage Claims, including accepting claim notifications submitted by the Contractor within the time stipulated in the Contract, ensuring proper and adequate contemporary records are maintained by the Contractor and reviewing/evaluating the detailed claim and supporting particulars of the basis of the claim;
- j) Respond to the Contractor's claim with approval, or with disapproval and detailed comments on the principles of the claim within the time period stipulated in the Contract;
- k) Agree or determine any extension of the Time for Completion and/or any additional payment for which the Contractor is entitled in accordance with the Contract;
- l) Assist the Employer in Dispute Resolution process including in adjudication, amicable settlement and arbitration; and
- m) Assist the Employer in Contract Close-out.

8.2 Other Tasks To Be Performed By The Engineer

In addition to above functions the Engineer is required to carry out following tasks to facilitate the smooth execution of the contract:

- i. Arrange the Kick-off meeting at the initiation of the Contract;
- ii. Arrange and chair regular progress review meetings;
- iii. Arrange and chair any ad hoc meetings with other entities such as authorities or utility agencies whenever required;
- iv. Maintain records/minutes of all meetings including digital recordings;
- v. Receiving and responding to contractual communications between the Employer and the Contractor;
- vi. Establish and maintain documents/correspondences management system to enable storage and retrieval of documents/ correspondences;
- vii. Identify any critical issues which may affect the performance of the Contract including progress, quality or price of the Contract and propose remedial action to mitigate such issues and follow up the implementation of such action to ensure effectiveness;
- viii. Maintain daily site records and quality records including inspection records and test reports;
- ix. Assist Employer in reviewing the guarantees, securities bond and insurance policies to ensure that they are complying with the Contract and remain effective
- x. Assist the Employer in reviewing the financial status of the Contract and ensure that sufficient funds are available for contract payment in both foreign and local currencies;

- xi. Communicate with funding agencies to discuss all the relevant matters of the project;
- xii. Prepare progress reports;
- xiii. Ensure proper collaboration among all parties involved;
- xiv. Liaise with the local authorities and other government institutions to facilitate obtaining of licenses and permits required to carry out certain activities;
- xv. Advise the Employer in performing certain functions for which the Employer is responsible;
- xvi. Prevent issues becoming disputes due to mishandling or negligence;
- xvii. Advise the Client on possible modifications in designs, specifications and methods for carrying out the Works in order to mitigate errors, to improve the performance of the works or to shorten the construction time; and
- xviii. Carry out design changes as required and issue necessary instructions/drawings to effect such design changes.

8.3 Main Responsibilities Of The Engineer

8.3.1 Monitoring Performance

Performance monitoring of the Contract is a key function of proper contract administration. The purpose is to ensure that the Contractor is performing all duties in accordance with the contract and for the Employer to be aware of and address any developing problems or issues.

Usually a contract is monitored based on time, cost and quality using the Contractor's works program, contract price and contract specification as baselines respectively.

8.3.2 Payment Certification

The Contractor should submit his Statements in accordance with the contract stating the amount he is entitled for based on the works completed during the period for which the statement is made. The amount the Contractor is entitled for should be evaluated based on rates or prices stated in the BOQ/Schedules for each item or rates/prices agreed or determined by the Engineer and actual quantity of work carried out. The Engineer should review such Statements to verify whether quantities given for each item is correctly representing work actually completed on site.

However, it is not mandatory for the Engineer to certify interim payments, value of which is less than the minimum payment amount specified in the Contract Data or Appendix to the Tender/Bid.

8.3.3 Withholding Payments

Public entities have the responsibility to protect the interests of the Employer and under appropriate circumstances, it may be necessary to withhold payments from Contractors, strictly in accordance with the terms of the contract. Circumstances where it may be necessary to withhold payment include, but are not limited to:

- i. Upon termination of the Contract by the Employer;
- ii. Overpayments due to errors in the previous payment certificates;
- iii. Unsupported or undocumented costs;
- iv. The cost of rectification or replacement of any defective works, until rectification or replacement is completed; and
- v. Value of work or obligation which the Contractor fails to perform, until the work or obligation is performed.

8.3.4 Contract Variation Management

During the term of a contract it may become necessary to make changes to the Works. These changes should be instructed as a variation to the contract and the variation should be managed in accordance with the provisions in the contract.

Changes to the scope of the Contract should not be instructed as variations but should be affected through an amendment to the contract, which will require the agreement of both parties to a revised contract price and time for completion of the Works. Contract amendments require approval of relevant authorities depending on the value of the contract.

8.3.5 Dispute Resolution

Dispute resolution involves a multi-tiered dispute resolution process with escalating severity and details of such process are covered separately in the GPMCM.

The goal of the multi-tiered dispute resolution process is to resolve disputes before they escalate to the next level. It is imperative therefore, that Employer personnel respond promptly to all contractor inquiries, requests, notifications and claims. The initial steps to be taken are:

- i. Identify the issue – it is always possible to resolve what may appear to be as a dispute, by providing the Contractor with information or clarifications;
- ii. Research facts – the Employer should obtain all the information regarding the dispute from all relevant sources, including the Engineer and the Contractor; and
- iii. Evaluation – the Employer should review all of the facts in conjunction with the requirements and terms of the Contract. The Employer should then determine the appropriate course of action.

Proper dispute resolution is a core skill of successful contract management. Hence, identification of problems early in the execution period, effectively communicating and formalizing the process in writing is essential.

Dispute Resolution mechanisms are differently handled in different forms of contracts and usually includes following:

- i. Dispute resolution through the Engineer;
- ii. Dispute Board /Dispute Adjudication Board;

- iii. Amicable Settlement; and
- iv. Arbitration.

Parties to a construction contract who are unable to resolve their disputes in an amicable manner through negotiations or by alternative dispute resolution mechanisms such as adjudication are able to refer such disputes for settlement by way of arbitration. Arbitration in Sri Lanka is governed by the Arbitration Act No: 11 of 1995, hereinafter referred to as the “Arbitration Act”.

Please refer “Annex 2” for a detailed note on the salient provisions of the Arbitration Act.

8.3.6 Maintaining Contract Administration Files

Maintaining one set of complete master contract administration files with EA/IA is essential. The files will provide a basis for settling claims and disputes, should they arise in administrative, alternative dispute resolution process or court actions. Throughout the life cycle of the contract, the contract administration files should contain:

- i. Copies of documents constituting the contract with any subsequent amendments;
- ii. Copies of all specifications, standards, drawings or Guides incorporated into the contract by reference;
- iii. A list of Contractor’s submittal requirements;
- iv. A list of all information furnished to the Contractor;
- v. Copies of all claim notifications, claim particulars and claim evaluations;
- vi. A schedule of compliance reviews, internal correspondence, if applicable;
- vii. Copies of all general correspondence related to the contract;
- viii. The originals of the Contractor’s records, returns, data or report submittals;
- ix. Copies of all routine reports required by the contract such as approval requests, and inspection reports;
- x. Copies of all notices to suspend works, notices to proceed, corrective action requests and variation orders;
- xi. Copies of all letters of approval pertaining to such matters as materials, the Contractor’s quality control program, method statements and work schedules;
- xii. The records/minutes of all meetings, both internal and external. Including sign-in sheets and/or agendas; and
- xiii. A copy of all contractor statements and payment certificates with supporting documents.

The Employer should maintain originals of all contracts in a central repository. This allows project staff to reference past or current contracts for useful information relating to a current project.

8.3.7 Construction Supervision, Quality Control and Quality Assurance

Engineer is responsible for supervision of construction works, to ensure the Works meet the required standards stipulated in the Specifications/Employer's Requirements. Usually this is achieved through establishment of Quality Control and Quality Assurance procedures to monitor the quality of Works, Materials, Plants and workmanship. The Engineer shall ensure quality of Works through tests, inspections, investigations and quality audits.

8.4 Limitations to the Engineer's Functions

Engineer has no authority to:

- i. Amend the Contract;
- ii. To relieve either Party of any duties, obligations or responsibilities under the Contract;
- iii. Instructing Variations unless under emergency conditions or when the value of the variation is less than the amount specified in the Contract;
- iv. Approving a proposal for Variation submitted by the contractor;
- v. Taking action under the certain Sub-Clauses which are constrained without obtaining prior specific approval of the Employer in accordance with the Particular Conditions of Contract;
- vi. Agreeing or determining an extension of time and/or additional cost in the event of encountering unforeseeable physical conditions; and
- vii. Instructing a variation for a work which is not within the scope of the Contract.

9 TERMINATION OF CONTRACT

When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. A contract may be terminated under two distinct situations namely; termination for convenience or termination for default.

9.1 Termination for Convenience

A termination for convenience, also known as no-fault termination, allows the Employer to terminate any contract, in whole or in part, at any time at its sole discretion, if it is determined that such termination is in the best interest of the Employer.

- i. Accordingly, the Employer shall provide the Contractor with written notice specifying whether it is terminating all or part of the contract. The notice of termination shall give the date of termination. If the contract is being selectively terminated, the Employer should specify which part(s) of the contract are being terminated.
- ii. In accordance with this Notice of Termination, the Employer shall:
 - a. Keep adequate records of compliance with this notice, including the extent

of completion on the date of termination;

- b. Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination;
 - c. Notify the Engineer, of any and all matters that may be adversely affected by this Termination; and
 - d. Take any other action required by to expedite this Termination.
- iii. The Contractor will generally be paid for allowable costs incurred up to the termination of the Contract. The Employer will not be liable for payment to the Contractor for the terminated portion of the work or any work performed or costs incurred after the effective date of termination.
- iv. Upon receipt of any invoice from the Contractor for work performed prior to the Notice of Termination, the Employer should thoroughly review the invoice to ensure that no excessive costs are included.

9.2 Termination for Default

A Contract may be terminated for default or breach of conditions that permit termination. An Employer is not required to terminate a Contract even though the breach may permit termination. Agencies may determine that it is in their best interest to pursue other alternatives. Examples of such alternatives include extending the completion date, allowing the Contractor to continue working or working to complete the outstanding work.

Termination for default should be used as a last resort and not as punishment. The purpose of a termination for default is essentially to protect the interests of the Employer while taking action to complete the work by another Contractor.

- i. Factors to consider prior to making a termination for default decision include:
 - a. Whether the Employer has done everything as reasonably possible to assist the Contractor and to complete the outstanding work;
 - b. The provisions of the contract and applicable regulations;
 - c. The specific contractual failure(s) and the explanation provided for such failures;
 - d. The urgency of the need for the contracted Works. The Employer may need to weigh the respective benefits and/or disadvantages of allowing a defaulted Contractor to continue performance or engaging a new contractor;
 - e. The availability of the other Contractors and the time required to engage them (compared to the additional time the current Contractor needs to complete the work); and
 - f. Availability of funds and/or resources to re-contract in the event such costs cannot be recovered from the defaulted contractor. Under a termination for default, the Employer is within its rights to demand re-procurement costs from the defaulting Contractor. Nevertheless, the Contractor may not be financially capable of financing the re-procurement, or such demand may result in protracted dispute resolution.

- ii. If a Contractor is terminated for default, the contractor is liable for actual damages and costs incurred by the Employer unless the contract states otherwise.

9.3 Force Majeure Clauses

A Contract may not be terminated for default when the failure to perform is due to reasons beyond the control of either party.

When an extraordinary event or circumstance beyond the control of the parties, or which could not have been reasonably foreseen at the time of entering into contract such as war, strike, riot, embargoes, or an event described as an act of God (such as hurricane, flooding, earthquake, volcanic eruption, etc) prevents one or both parties from fulfilling their obligations under the contract, a contract cannot be terminated for default.²⁰

9.4 Failure to Comply with Notice to Correct

When the Contractor fails fulfill any obligation under the Contract, the Engineer may notify the Contractor through a Notice to Correct, specifying a reasonable period of time for him to remedy such failure, However if the Contractor fails to comply with such Notice to correct within the specified period, the Employer is entitled to terminate the Contract for Contractor's default.

9.5 Notice of Termination

If the Contractor fails to correct the situation or provide a satisfactory explanation as requested, the contract may be terminated. The Notice of Termination should contain the following:

- i. The contract number, if any, and date of contract;
- ii. The effective date of termination;
- iii. Reference to the clause under which the contract is being terminated;
- iv. A concise, accurate statement of the facts justifying the termination; and
- v. A statement that the contract being terminated may be re-procured and that the contractor will be held liable for any additional costs incurred due to such re-procurement. Before including this statement, the contract should be reviewed to determine whether the provisions are available under the contract.

10 CONTRACT CLOSING PROCESS

10.1 General

The contract closing process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities and unfilled obligations remaining. In addition, contract close-out is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

²⁰The term "Force Majeure" is generally defined in the Contract Agreement.

A contract is completed when all works have been completed; all reports have been delivered and accepted; all administrative actions have been accomplished; all Employer furnished equipment and material have been returned; and final payment has been made to the Contractor upon obtaining Contractor's Discharge.

10.2 To initiate the close-out process, the Employer should first determine that the Contractor has satisfactorily performed all required contractual obligations. A contract is ready for closing when:

- i. All Works have been completed, defects remedied, deliverables, including reports, as built documents and operation/maintenance Guides have been delivered and accepted by the Employer. Contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed; and
- ii. Final payment has been made;
- iii. All contract monitoring issues have been resolved;
- iv. All property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract;
- v. Final acceptance from the Engineer has been received (if applicable);
- vi. Contractor is aware of and is in compliance with records retention requirements and a plan has been developed for contract file maintenance; and
- vii. Any deficiencies found as part of the close-out process are documented and communicated to all appropriate parties.

ANNEX 1

ANNEX 1 - CONCEPTS OF CONTRACT

A1 General Legal Principles

Sri Lankan Contract Law is primarily governed by Roman Dutch Law. However there are some contracts such as bills of exchange and other negotiable instruments such as promissory notes and cheques which are governed by English Law.

Under Roman Dutch Law "*justa causa*" or just reason was deemed adequate to satisfy the requirement to have a legally valid contract. This differed from the English Law requirement to have valuable consideration (which can be assessed/valued in pecuniary terms) to give effect to a legally valid contract.

In contrast the concept of "*just reason*" under our common law has a more wider meaning than consideration and has been recognized as being applicable to contracts other than those specifically governed by English Law in a number of cases.²¹

A1.2 Definition of a Contract

The essence of a legally enforceable Contract is an agreement between two or more parties entered into voluntarily each of whom intends to create one or more legal obligations between them. The parties' intention can be manifested in words or by acts.

A1.3 Offer and Acceptance

The elements of a contract are "*offer*" and "*acceptance*". "An offer is a proposal made by one person to another of certain terms of performance with the intention that it be accepted by such other person"²². Thus a Notice of Tender is merely an invitation to treat and does not tantamount to an offer.

The Offeror is the person making the offer and the Offeree is the person to whom the offer is made. An offer must be definite and must be communicated. An offer can only be revoked before acceptance by the Offeree. After acceptance a binding contract comes in to effect and thereafter it cannot be withdrawn. Acceptance must be made before the offer is revoked, lapsed or rejected.

Acceptance must be unqualified and unconditional. A conditional acceptance does not legally constitute acceptance. When a party to whom an offer has been made conveys to the Offeror that he/she is willing to agree to the offer provided that some changes in the proposed term or conditions by adding "*subject to.....*" clauses" operates as a counteroffer. A counteroffer must be accepted by the Offeror in order to establish a legally binding contract between the parties. Acceptance has to be communicated. The manner which the offer can be accepted can be prescribed by the Offeror.

The absence of the following elements will make a contract invalid:

- i. Agreement between the parties;

²¹In the case of *Lipton v Buchanan (1904) 8 NLR 49* it was held that a promise made to discharge an existing moral obligation or to perform an act of benevolence or generosity is adequate to satisfy *justa causa*. In *Public Trustee vs Udurawana* 51 NLR 193 it was recognized that a promise was legally enforceable under Roman Dutch Law.

²²Vide *Weeramanthri C.G*, Law of Contracts, page 110.

- ii. Actual or presumed intention of the parties to create a legal obligation;
- iii. Due observance of prescribed forms or modes of agreement;
- iv. Capacity of the parties to contract; and
- v. Legality and possibility of the object of the agreement.

A1.4 Factors vitiating agreement/consent of parties

The following factors will vitiate agreement/consent of parties thus making the contract invalid:

- i. Error/Mistake
A mistake can be one that prevents agreement or which nullifies and agreement or which renders a contract voidable. A mere error of judgment does not give rise to a mistake to invalidate a contract, but must be such that demonstrates there never was any real agreement amongst the parties.
- ii. Incapacity, including mental incompetence and infancy/minority
Sometimes the capacity of either natural or artificial persons to either enforce contracts, or have contracts enforced against them is restricted. People under the age of maturity are not entitled to enter in to contracts due to their incapacity. Another example might be people who are mentally incapacitated. In these cases the contract is either void or voidable.
- iii. Duress
The parties must enter in to a contract willingly if it is to be enforceable. However there can be situations where this may be in question. This occurs when a person acts in fear or perceived danger/threat. “Economic Duress” or legitimate threat to financial interests is another category of duress recognized by English and Australian courts.
- iv. Undue influence
Principles of English Law relating to undue influence are applicable to Sri Lanka Law. Undue influence occurs for instance in a situation when one party to contract unduly or unfairly exerts influence over the party to enter into such contract. Undue influence can be actual or presumed. Undue influence is presumed where certain categories of relationships exist (fiduciary or confidential). Examples include solicitor/client, doctor/patient, and parent/child. Undue influence can be rebutted/disapproved if it can be proved that the party in the weaker position sought independent advice before entering into the contract/transaction. Section 111 of the Evidence Ordinance stipulates that the proof of good faith in transactions is the party in active confidence.
- v. Illegality
Contracts which are illegal by statute (for instance, prohibitions under the excise Ordinance, Gaming Ordinance etc), by common law (contracts to commit crimes or civil wrongs, to defraud revenue, promotes corruption etc) or contracts contrary to public policy cannot be enforced.

vi. Misrepresentation or fraud

A misrepresentation is a false statement which induces the other party to enter in to the agreement. If a misrepresentation is to relevant, the misrepresentation must be material, (i.e. have the effect of influencing the mind of the representation), it must induce the other party to enter the contract and made with the intention that the representative would act upon same. Frustration of purpose.

A1.5 Discharge of Contracts

A contract will be discharged under the following circumstances:

- i. Completeness of Performance;
- ii. By agreement between the parties;
- iii. Breach of Contract;
- iv. By operation of Law; and
- v. Frustration (when an unforeseen event renders the performance of contractual obligations impossible).

A1.6 Breach of Contract

When either party to the Contract breach the Contract, the other party can seek relief in the form of the following legal remedies:

- i. Recovery of Damages from defaulting party;
- ii. Specific Performance; and
- iii. Obtain an Injunction forcing the defaulting party to perform certain actions and/or refrain from taking certain actions.

A1.7 Damages for Breach of Contract

The main principle on which damages for breach of contract are awarded in Sri Lanka is that the sum to be awarded should, as nearly possible be a sum which will put the wronged party in the position which he would have enjoyed if the wrong had not occurred. The amount of damages should include compensation to the party for actual losses well as loss of profit.

Damages may be:

- i. General (direct loss suffered by a plaintiff /gain not obtained as any other person in similar circumstances); and
- ii. Special (damage suffered in particular circumstances of the case). If parties to a contract have pre-agreed the quantum of damages that may be recoverable in the event of breach of contract, it is referred to as liquidated damages.

If liquidated damages come under the guise of a penalty Courts will not enforce penalties as damages. The Courts will thus examine the contract to ascertain whether what is termed as liquidated damages are in fact penalties.

A1.6 Interpretation of a Contract

A contract should be interpreted as a whole and words should be interpreted in line with everyday usage and given their natural and ordinary meaning. Generally, the meaning of a contract is determined by looking at the intentions of the parties at the time of the contract's creation. When the intention of the parties is unclear, courts look to any custom and usage in a particular business and in a particular locale that might help determine the intention. Courts will generally give effect to the manifested intention of the parties as laid down in a Contract Agreement.²³

The contract will, in many instances, comprise multiple documents which may at times conflict with each other. The contract should set forth the order of priority or precedence in the event of conflicts between documents.

Normal priorities that should be addressed in the establishment of an order of precedence when the priority of documents provided within the contract is not applicable, is as follows:

- i. Documents are prioritized by importance of their contents;
- ii. Where multiple documents deal with the same issue, the priority should be in order of time, with the last document agreed in time having the highest priority;
- iii. Where multiple formats deal with the same subject matter, such as drawings and specifications, project staff would normally want the written word (such as the specifications) to have priority as they would provide the more detailed description of what was intended;
- iv. Documents that are made part of another document are considered to be complimentary in nature, so they have to be read and interpreted as a whole; and
- v. If any ambiguity on interpretation of any clause in the Contract entered by the Employer and the Contractor need to be understood in consistent with the language of the whole contract and the intention of the parties²⁴.

The contra proferentem rule is a legal rule of interpretation which requires that any ambiguities in the language in a clause are to be construed against the party who drafted the clause. Such interpretation must however, be consistent with the language of the whole contract and the intention of the parties.

²³Upon assuming the Contract Management function it is important that project staff familiarize themselves with the details of the contract. This is important so that project staff will have a general understanding of the roles and responsibilities that are identified in the contract enabling them to interpret the contract for manage performance, especially when issues arise.

ANNEX 2

ANNEXE 2 – ARBITRATION ACT NO: 11 of 1995 (ARBITRATION ACT)

A2.1 Salient Provisions Of The Arbitration Act

Parties to a construction contract who are unable to resolve their disputes in an amicable manner through negotiations or by alternative dispute resolution mechanisms such as mediation or by adjudication are able to refer such disputes for settlement by way of arbitration. Arbitration in Sri Lanka is governed by the Arbitration Act No:11 of 1995, hereinafter referred to as the “Arbitration Act”.²⁵

A2.2 Arbitration Agreement

Section 3(1) of the Arbitration Act sets out that an arbitration Agreement can either be an arbitration clause in a contract or in the form of a separate Agreement. The most vital element is that in order to constitute a valid agreement it must be in writing. The Section further states that an agreement shall be considered to be in “**writing**” if it is contained in an exchange of letters, telegrams or other means of telecommunication which provides a record of such Agreement. Thus, if the Contract which contains the arbitration clause is not duly executed or signed, parties are prevented from invoking the arbitration clause.

A2.3 Party Autonomy²⁶

The freedom of contractual parties to determine the manner in which they wish to resolve their disputes is a reflection of the consensual nature of arbitration. This is reflected in number of provisions of the Act where the parties are at liberty to decide and agree on the number of arbitrators (Sec 6(1), procedure for appointing arbitrators Sec 16(1), the Rules of Procedure (Sec 17) and the law applicable to the substance of the dispute (Sec 24(1)).

A2.4 Limitations imposed on the Jurisdiction of Court

Limitations imposed upon Court jurisdiction is articulated in Section 5 of the Arbitration Act. With regard to any matter which the parties have agreed to submit for determination by way of arbitration and to such extent, the court is devoid of jurisdiction to hear or determine such matters only. The legislative intent is for the court to play a supportive role and not an interventionist role as reflected in Section 13 where the court is empowered to provide relief by way of injunctions or interim measures to protect or secure a claim which forms the subject matter of the dispute. However, when a party to an arbitration agreement institutes legal proceedings against the other party, courts have jurisdiction to hear and determine such matters, if the other party does not object.

Applications to Court are permitted under the following circumstances:

- i. Section 07-appointment of Arbitrator;
- ii. Section 10-grounds for challenge of an Arbitrator;
- iii. Section 11-competence of arbitral tribunal;

²⁵ Further reading: Arbitration Law in Sri Lanka, Edited by Kanaglsvaran K, PC & Wijerathene S.S., published by ICLP, 3rd edition 2011.

²⁶ *Amarasinghe J in Merchant Bank of Sri Lanka vs Tillekaratne D.V.D.A. (S.C Appeal No: 43/2001. 2001 (B.L.R.)* held that “Party Autonomy is a fundamental principle of Arbitration law and this is given effect by the legislature in Section 7(1) of the Act”.

- iv. Section 13-interim measures of protection;
- v. Section 20-summons for appearance;
- vi. Section 21-refusal/failure to attend before the tribunal for examination; and
- vii. Section 30-delay in prosecuting claims.

A2.5 Composition of the Arbitral Tribunal

Section 6 of the Arbitration Act states that the parties are at liberty to determine the number of arbitrators. If they appoint an even number, the arbitrators so appointed must appoint an additional arbitrator who will function as chairman of the arbitral tribunal.

The Arbitral Tribunal can comprise of a single arbitrator. If the parties have not agreed to the number it shall be a panel of 03. Parties are also free to determine the manner in which the arbitrator can be appointed.

A2.6 Awards

Form and content of award are stated in Section 25 of the Arbitration Act which mandates that an award must be in writing and signed by the arbitrators constituting the arbitral tribunal. A specific reference to date and place must be stated.

Most importantly, (unless there is an agreement to the contrary) the Arbitral Tribunal is permitted to make an award for payment of money (whether on a claim for liquidated or unliquidated amount) and order interest at the rate agreed by the parties (If there is no such agreement the rate in to be legal interest prevailing at the time of making of the award) to be paid on the principal sum awarded from date commencement to date of award, plus any interest awarded for any period prior to the institution of proceedings together with further interest as stipulated in Section 28 of the Arbitration Act.

A2.7 Rules of Procedure

Parties are free to determine the rules of procedure governing the conduct of arbitration under Section 17 of the Act. They may either select institutional procedures or ad-hoc procedures. Parties need to be mindful of costs when selecting the rules of procedure such as International Chamber of Commerce (ICC Rules),²⁷ or UNCITRAL²⁸ rules.

One option to consider is to adopt the Rules of the ICLP Arbitration Centre²⁹. Institute For the Development of Commercial and Practice (ICLP) is an institutional arbitration Centre and operates under a council of management. ICLP has its own rules which the parties may incorporate in the arbitration clause.

If parties select ad-hoc arbitration and decide on their own procedures they must ensure that such procedure is in compliance with the provisions of the Act and is not subject to legal challenge during enforcement.

²⁷ International Chamber of Commerce-Court of Arbitration (ICC Court)-website: www.iccwbo.org.

²⁸United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. Website: www.uncitral.org.

²⁹ICLP website – www.iclp-arbitrationcentre.com.

A2.8 Finality of the Arbitral Award

According to Sec 26 of the Arbitration Act the arbitral award made by the tribunal is deemed to be final and binding on the parties (Unless set aside on the specific grounds set out in Sec. 32)³⁰.

The specific grounds on which an arbitral award may be set aside by High Court are stipulated in Sec. 32. The application must be made within 60 days of the receipt of award.

A2.9 Enforcement

In accordance with the provisions of Section 31 of the Act an application for enforcement must be made to the relevant High Court by way of petition and affidavit together with the Original or a certified copy thereof to the satisfaction of court.

The application must be made within one year after the expiry of 14 days of the making of the award.

It is pertinent to note that unless it is on a question of law and only with leave from Supreme Court no appeal or revision is permitted. If the Contract Agreement contains an exclusion clause where parties have specifically agreed on excluding the right of appeal, leave to appeal is prohibited. (Vide Sections 37(4) and Section 38).

³⁰*In Light Weight Body Armor Vs Sri Lanka Army SC (CHC) Appeal no. 27/A 2006 Shiranee Tilakawardena J.....* held that “ in exercising jurisdiction under Section 32 of the Act, the Court cannot sit in appeal over the conclusions of the Arbitral Tribunal by re-scrutinizing and re-appraising the evidence considered by the Arbitral Tribunal.” and that “the Arbitral Tribunal is the sole judge of the quality as well as the quantity of the evidence and it is not open for the court to take upon itself the task of being a judge of the evidence before the tribunal. It is not open to the court, in terms of the Arbitration Act to probe the mental process of the decision contained in the Award and to even speculate or query the reasoning that impelled the decision. Therefore an Award is not as a rule vulnerable to challenge except to the process and ambit contained in Section 31 of the Act.” “Section 32 contains the sole grounds upon which an Award may be challenged and set aside, courts have no jurisdiction to correct patent and glaring errors of law in Award unless it can be established to be a jurisdictional error or can be shown to be of such a nature as to render the award contrary to public policy.”

ANNEX 3

ANNEXE 3 – STANDARD FORMS OF CONTRACTS

A3.1 Standard Forms of Contracts

The widely used family of Contracts is commonly referred to as FIDIC contracts. There are certain forms of contracts included within Standard Bidding Documents published by funding agencies such as World Bank and ADB, which are currently used for foreign funded projects. ICTAD contracts are widely being used for domestic contracts. However, upon the enactment of the Construction Industry Development Act, No. 33 of 2014, it is mandatory to use ICTAD documents for any contract awarded in Sri Lanka, except for contracts between GOSL owned entities and foreign contractors.³¹

A3.2 Contracts and Documents Constituting Contracts

The terms and conditions in construction contracts are contained in several documents which form the contract. Documents forming a contract consist of Contract Agreement, Letter of Acceptance, Memoranda of Understanding (if any), Letter of Tender, Addenda, Particular Conditions of Contract, General Conditions of Contract, Specifications/Employer's Requirements, Drawings, Bill of Quantities/ Schedules, Contractor's Proposal (if any) and Supplementary Information (if any).

General Conditions of Contract are standard sets of terms and conditions which should be read in conjunction with particular conditions.

There are different forms of contracts; namely construction only contracts where the contractor executes works which are designed by the Employer or a consultant appointed by him; design and build contracts where the Contractor will design and build the works; EPC /turnkey contracts where the Contractor executes every stage of the project including design, procurement and construction until handing over of completed works, which are ready for use/operation; design, build and operate contracts where a Contractor will design, build and operates/maintain the works upon completion.

General Conditions of Contracts, in any form, usually specify:

- i. The responsibilities, obligations, entitlements and liabilities of the parties to the contract and also stipulate authorities, duties and responsibilities of the Engineer to the contract;
- ii. Allocate risks to the parties that are most suitable to bear such risks; and
- iii. Sets out procedures to follow in various stages of the contract namely execution of the works such as commencement, execution, completion and handing over, defects notification period, contract close out, changes, claims, suspension, termination and dispute resolution.

There are several types of General Conditions of Contract available under different standard forms of contracts published by various organizations such as FIDIC, ICTAD, ADB and WB. The following are the four major types of contracts, which are being used in infrastructure projects implemented by GOSL.

³¹In contrast sub paragraph 1.3.3 of the NPA Guidelines stipulates that in the case of foreign funded projects, if the funding agencies require their SBDs to be used, this requirement would prevail. Hence, CIDA should clarify this position with GoSL and the funding agencies.

A3.3 Construction Contracts

Construction contracts require a Contractor to execute works which are designed by the Employer or a consultant appointed by him. It is also possible to allocate a Contractor to carry out a limited design scope under construction contracts. Payments in construction contracts are usually based on re-measurement (measure and pay) where the Engineer certifies payments for works completed after taking measurements. It is however, possible to include certain items of works within a construction contract, for which payments can be made on a lump sum basis (e.g. FIDIC Red Book and Pink Book, ICTAD SBD/1, SBD/2 and SBD/3).

A3.4 Design and Build Contracts

Design and Build contracts require the Contractor to design and build the Works. However it is possible to include in the contract certain items of works which are not designed by the Contractor but by the Employer or a consultant appointed by him. Payments for work in Design and Build contracts is usually in lump sums although payment for certain items of works can be made on a re-measurement (measure and pay) basis (e.g. FIDIC Yellow Book, ICTAD SBD/4 and ENAA).

A3.5 Turnkey Contracts

Turnkey Contracts require the Contractor to carry out every stage of a project from its inception to completion, including conceptual design, detail design, procurement and construction. The project should be handed over to the employer/owner under full operational conditions. The Employer may administer the contract himself or appoint an Employer's representative to act on his behalf under the contract. The payment for this type of contract is usually on a lump sum basis. (E.g. FIDIC Silver Book).

A3.6 Design, Build and Operate Contracts

Design Build and Operate contracts require the Contractor to design, build and operate the Works. However in this type of contract, the Engineer's role is excluded and duties that are usually performed by the Engineer such as determining the value of Works, costs or extensions of time, are carried out by a party/person designated as the "Employer's Representative" who is responsible for making determinations on the matters relevant to the Contract". The payment for this type of contract is - usually lump sum type contracts. (e.g. FIDIC Gold Book)

COMPARISON OF MAJOR FEATURES IN DIFFERENT FORMS OF CONTRACTS

S/ No	Feature	Construction Contracts	Design & Build Contracts	EPC/Turnkey Contracts	Design, Build & Operate Contracts
1	Examples of Forms	Red Book Pink Book	Yellow Book ENNA Plant Document	Silver Book	Gold Book

2	Scope of Contract	Construction of Works for which designs are provided by the Employer or a consultant appointed by him. However there may be a limited design scope allocated under the contract.	Design and construction of the Works. However there may be certain items for which designs are provided by the Employer or a consultant appointed by him.	Conceptual design, detailed design, procurement and construction of the Works.	Conceptual design, detailed design, procurement, construction and operation of the Works.
3	Contract Administration	By Engineer appointed by the Employer	By Engineer (Project Manager for ENAA) appointed by the Employer.	By Employer or his Representative	By Employer's Representative
4	Effectiveness of the Contract	When the Employer issues the Letter of Acceptance to the Contractor.	When the Employer issues the Letter of Acceptance to the Contractor.	On the date stated in the Contract Agreement	When the Employer issues the Letter of Acceptance to the Contractor.
5	Payments for completed works	Usually re-measurement (measure and pay) type requiring the Engineer to certify payments for actual quantities of work done. There may certain items of works for which payments are certified based on lump sums.	Usually lump sum type contracts, requiring the Engineer (Project Manager for ENAA) to certify payments for works completed based on percentages of lump sums. There may certain items of works for which payments are certified on a measure and pay basis.	Lump sum type contracts, requiring the Employer or his Representative to certify payments for works completed based on percentages of lump sums.	Lump sum type contracts, requiring the Employer's Representative to certify payments for works completed based on installments specified in the Contract.

A3.7 FIDIC Forms of Contracts

A3.7.1 FIDIC Construction Form of Contract - Red Book 1999

The FIDIC Construction form of Contract (the "Red Book") is intended for Construction of Building and Engineering Works Designed by the Employer. The main features of this Contract can be summarized as follows:

- i. It is suitable for all types of projects where the main responsibility for design lies with the Employer (or its Design Consultant) although provision can be made for the Contractor to design elements of the Works.
- ii. The administration of the Contract including approval of the Works, certification of payments and determination of entitlement of the Contractor for additional costs and extensions of time, is carried out by the Engineer.

- iii. Payment to the Contractor is based upon work done and rates are determined according to a Bill of Quantities (a Standard Method of Measurement should be stated). The amount paid will reflect or correspond to the Works that have been completed on site.
- iv. Risk sharing is balanced between the parties to the contract. For example, the Employer usually assumes the risks of unforeseeable “adverse physical conditions”.
- v. Claims by both parties must follow contractually stipulated procedures. The conditions imposed on the Contractor are harsher than those imposed on the Employer in that the Contractor is subject to a “fatal” notice provision namely the Contractor is precluded from being entitled to any payment if the claim is not submitted within 28 days after the Contractor becomes aware or ought to have been aware of any circumstance or event which is likely to lead to an extension of time for completion or any additional payment.
- vi. The Contractor has a certain degree of financial protection for performance of the Works in that the Contractor can request evidence from the Employer of his financing arrangements available to pay the estimated Contract Price.
- vii. Materials can be paid for both on and off site if strict criteria are followed, including the listing of materials for which payment maybe sought within the Contractor’s tender

A3.7.2 FIDIC Construction Form of Contract MDB Harmonized - Pink Book 2010

The FIDIC Construction form of Contract for Multilateral Development Banks Harmonized Edition 2010, (the “Pink Book”) is intended for Construction of Building and Engineering Works Designed by the Employer and is funded by a participating Development Bank.

In comparison to the FIDIC Red Book, the Pink Book imposes stricter obligations/standards on both the Employer and the Contractor. Examples include:

- i. Employer’s financial arrangements: The Employer has to demonstrate that it has the ability to pay the Contractor the Contract Price for the execution of the Works;
- ii. Employer’s claims: The Employer must give notice of a claim as soon as practicable and at least within 28 days of the Employer becoming aware, or when it should have become aware of the circumstances giving rise to the claim; and
- iii. Termination by Contractor: mere failure of the Employer to perform its obligations is not a sufficient basis for termination of the contract by the Contractor. The breaches of contract committed by the Employer must instead 'materially and adversely affect the economic balance of the contract and/or the ability of the Contractor to perform the contract' in order to provide a sufficient basis for termination of the contract by the Contractor.

(The “Pink Book”) has included additional grounds for termination namely:

- i. The suspension of the loan/credit from which the Contractor is paid; or
- ii. if the Engineer does not give the Contractor instructions on the execution of the Works 180 days after the letter of acceptance.

In addition, the Pink Book includes a number of other clauses addressing matters of concern to MDBs, which are summarized below:

- i. Specific provisions relating to Bank audits and inspections of project site and accounts and other documents;
- ii. Provisions to safe guard the well being of workers employed by the Contractor;
- iii. Provisions to facilitate the engagement of foreign personnel;
- iv. Provisions which mandate the Contractor to put in place a non-discriminatory recruitment policy for staff to be employed for the project; and
- v. stringent provisions with regard to the ethical standards of conduct of the Contractor and the entitlement of the Employer to terminate the contract if the Contractor is deemed to have been engaged in corrupt or fraudulent or collusive or coercive practices as defined therein.

The following amendments have been incorporated into the Pink Book in comparison to the Red Book.

- i. Minor amendments have been made to definitions as set out below:
 - The terms “Bank” and “Borrower” are now defined.
 - The terms “Unforeseeable” and against which adequate preventive precautions could not reasonably be taken have been defined.
 - Added (1.1.6.8).
 - “Tender” synonymous with “bid”- “tenderer” = “bidder” (1.2).
 - “Versions of contract in different languages” removed (1.4).
 - Any error - not only “technical”- to be informed (1.8).
 - Contract details that are required to be confidential (1.12).
 - The Bank may inspect or audit the Contractor’s accounts (1.15).
- ii. “Appendix to Tender” becomes “Contract Data” - and is entirely filled in by Employer (1.1.1.10).
- iii. “Contract Data” becomes Part A of Particular Conditions.
- iv. “Dispute Adjudication Board” = “DAB” is simplified to “Dispute Board” = “DB”.
- v. Cost no longer refers to reasonable profit but states profit since at clause 1.2 profit is fixed at 5% unless stated otherwise in the contract data.
- vi. Sub-Clause 1.5: is a new clause that allows the lender’s representatives to inspect the site and audit the Contractor’s accounts and records relative to the project.
- vii. Sub-Clause 2.1: access to the site must be given such that the Program can proceed “without disruption”.

- viii. Sub-Clause 2.4: the Employer has to demonstrate its ability to pay the contract price before “the commencement date” and also “punctually”.
- ix. Sub-Clause 2.5: the Employer must give notice of its claims within 28 days. While this time frame is more onerous, no further condition precedents have been added.
- x. Sub-Clause 3.1: the Engineer has to obtain the Employer’s approval before dealing with claims in respect of unforeseeable physical conditions and the issue of variations to the Works.
- xi. Sub-Clause 3.5: the Engineer has to give its determination “within 28 days from receipt of the corresponding claim or request...”
- xii. Sub-Clause 6.2: there is an obligation upon the contractor to inform its personnel of their liability to pay local income tax
- xiii. Sub-Clause 8.1: the project cannot commence unless:
- xiv. The contract agreement has been signed by both parties;
- xv. The Contractor has reasonable proof that funding is in place; and
- xvi. The advance payment has been received by the Contractor.
- xvii. Sub-Clause 8.6: the Contractor can be paid for acceleration measures to overcome Employer delays.
- xviii. Sub-Clause 13.1: the Contractor is not bound to carry out a variation if it would “trigger a substantial change in the sequence or progress of the works”.
- xix. Sub-Clause 15.5: whilst the Employer can terminate for convenience it cannot terminate to pre-empt a just termination by the Contractor.
- xx. Sub-Clause 15.6: is a new clause that attempts to deal with corrupt and/or fraudulent practices.
- xxi. Sub-Clause 16.2: the Contractor must now demonstrate that the Employer’s failures must “materially and adversely affect the economic balance of the contract and/or the ability of the contractor to perform the contract” prior to termination. There are however two further grounds allowing the Contractor to terminate. Failure of the funder to provide funds; the failure of the Engineer to give the Contractor instruction to commence execution of the Works 180 days after the letter of acceptance.
- xxii. Sub-Clause 19.2: in order to claim force majeure the claiming party must demonstrate that it has been prevented from performing “its substantial obligations”
- xxiii. Sub-Clause 20.6: arbitration rules may differ according to the origin of the lending Employer.

A3.7.3 FIDIC Plant and Design-Build Form of Contract - Yellow Book 1999

The FIDIC Plant and Design-Build form of contract (the “Yellow Book”) is intended for Plant and Design-Build for electrical and mechanical plants and for building and engineering works designed by the Contractor.

The main features of this form of Contract can be summarized as follows:

- i. It is suitable for all projects where the main responsibility for design lies with the Contractor based upon the Employer’s Requirements even if provision is made for the Employer (or his Engineer) to design certain elements of the Works;
- ii. The administration of the Contract including approval of the Works, certification of payments and determination of entitlement of the Contractor for additional costs and extensions of time, is carried out by the Engineer;
- iii. Payment to the Contractor is based upon a Lump Sum price and against a schedule of milestones to be achieved by the Contractor. This type of payment mechanism indicates that the Yellow Book will most likely be used for process plants where a high degree of offsite manufacture of plant and equipment is foreseen, and payments cannot therefore be made on site on the basis of inspection of materials. The terms for lump sum based payments should be drafted to ensure that a proper account of the materials is provided i.e. require the Contractor to provide a list of such plant and equipment within the Contractor’s tender similar to the terms provided in the Red Book; and
- iv. Testing procedures leading to completion are likely to be more complicated than those found in the Red Book. Tests after Completion shall be carried out by the Employer in addition to Tests on Completion.
- v. The Yellow Book shares with the Red Book the provisions noted above relative to:
 - Risk sharing.
 - Claims by both Parties.
 - Financial protection for the Contractor.

A3.7.4 FIDIC EPC/Turnkey Form of Contract - Silver Book 1999

FIDIC EPC/Turnkey form of Contract (the “Silver Book”) is intended for EPC/Turnkey Projects. Under this form of contract, the Contractor assumes responsibility for a wider range of risks than under the Red and Yellow Books. To obtain increased certainty of the final price, the Contractor is often asked to cover such risks such as the occurrence of poor or unexpected ground conditions. If the Contractor is to carry such risks, the Employer must provide him time and opportunity to obtain and consider all relevant information before the Contractor is asked to sign on a fixed contract price.

The main features of this Contract can be summarized as follows:

- i. Design liability rests solely with the Contractor. The Employer will provide their requirements for design but these are often in the form of a brief performance specification;

- ii. The Contractor carries out all engineering, procurement, and construction, often including performance tests after completion; a “turn-key” project allowing operation of the facility upon completion;
- iii. Payments are made on a lump sum basis and the payment terms are most likely similar to those envisaged under the Yellow Book;
- iv. The Employer should pay the Contractor an amount more than the Employer would have paid under a Plant and Design-Build form of contract, given that the Contractor assumes the total responsibility for the design and construction of the works, including all the risks involved;
- v. The Employer can expect a higher degree of certainty than the agreed contract price and time will not be exceeded;
- vi. The Employer need not be involved in the day-to-day progress of the construction works, provided the end result meets the performance criteria that the Employer has specified; and
- vii. It is not required to obtain the services of an Engineer to administer the Contract. The Employer may appoint an Employer’s Representative to supervise and provide instruction on the Execution of the Works by the Contractor.

When the Red Book or Yellow Book is used, the Employer pays the Contractor only when specific risks occur. The Contractor does not therefore have to account for risks that are difficult to value in the tender. The Employer has a great degree of uncertainty in respect of the final price and the final time for completion. When the Silver Book is used, however, the Employer passes the responsibility for most of the risks to the Contractor for a higher contract amount and therefore, the Employer has a great degree of certainty in respect of the final price and the final time for completion.

The Silver Book ensures certainty of cost and time. The Contractor is asked to allow within its tender for a wide range of risks relative to cost and time; such risks will most likely include all ground conditions (potentially in a country of which the Contractor will have little knowledge) and the completion of the Works will be based upon a strict but often brief performance related specification.

The Employer will still bear certain risks such as Force Majeure but the unbalanced risk profile of this Contract will undoubtedly be a higher price; a factor that Employers must accept and hence select only a small number of contractors to give tenders.

Given the above circumstances, in the event the Employer selects the Silver Book, the Employer should recognize the significant costs for a Contractor to produce a tender.

Similarly where Employers have chosen a turnkey style of contract, the Contractor should be given complete freedom to carry out the Works in the chosen manner in order to satisfy the performance criteria laid down by the Employer.

If the Employer cannot grasp such factors, or the tender time is too short to allow the Contractor to compile an adequate tender, or considerable amounts of work are underground, or difficult to inspect, it is recommended that the Employer uses the Yellow book, accepting some additional risks and receiving a lower tender price.

A3.7.5 Comparison of the Main Features of FIDIC Red, Yellow and Silver Books.

Feature	Red Book Construction	Yellow Book Plant and Design-Build	Silver Book EPC/Turnkey Projects
Type of Scope	Recommended for building and engineering works if most (or all) of the works are to be designed by (or on behalf of) the Employer.	Recommended for the provision of electrical and/or mechanical plant and for building and engineering works if most (or all) of the works are to be designed by (or on behalf of) the Contractor.	Suitable for a process or power plant, a factory or similar facility, or an infrastructure project or other type of development, if (i) a higher degree of certainty of final price and time is required, and (ii) the Contractor takes total responsibility for the design and execution of the project.
Effectiveness	The Contract typically becomes legally effective when the Employer issues the Letter of Acceptance to the Contractor. Alternatively, there may be no such Letter, and the Contract becomes effective in accordance with the Contract Agreement.	The Contract typically becomes legally effective when the Employer issues the Letter of Acceptance to the Contractor. Alternatively, there may be no such Letter, and the Contract becomes effective in accordance with the Contract Agreement.	The Contract typically becomes legally effective in accordance with the Contract Agreement. The Letter of Tender may be worded so as to allow for the alternative of the Contract becoming effective when the Employer issues a Letter of Acceptance.
Contract Administration and Dispute Resolution	The Contract is administered by the Engineer who is appointed by the Employer. If disputes arise, they are referred to a DAB for its decisions. Alternatively, Particular Conditions may specify the Engineer's decisions on disputes, in lieu of a DAB.	The Contract is administered by the Engineer who is appointed by the Employer. If disputes arise, they are referred to a DAB for its decisions. Alternatively, Particular Conditions may provide that the Engineer can decide on disputes in lieu of submission of the disputes to the DAB.	The Contract is administered by the Employer (unless he appoints an Employer's Representative) who endeavours to reach agreement with the Contractor on each claim. If disputes arise, they are referred to a DAB for its decisions.
Responsibility of the Contractor	The Contractor designs (but only to the extent specified) and executes the works in accordance with the Contract (which includes the Specification and Drawings) and the Engineer's instructions.	The Contractor provides plant, and designs (except as specified) and executes the other works, all in accordance with the Contract, which includes his Proposal and the Employer's Requirements.	The Contractor provides plant, and designs and executes the other works, ready for operation in accordance with the Contract, which includes his Tender and the Employer's Requirements.
Certification of Payments	Interim and final payments are certified by the Engineer, typically determined by	Interim and final payments are certified by the Engineer, typically determined by reference to	Interim and final payments are made without any certification: typically determined by reference to a

	measurement of the actual quantities of the works and applying the rates and prices in the Bill of Quantities or other Schedules.	a Schedule of Payments.	Schedule of Payments.
	Other valuation principles can be Specified in Particular Conditions.	The alternative of measurement of the actual quantities of the works and applying the rates and prices in a Schedule of Prices can be specified in Particular Conditions.	The alternative of measurement of the actual quantities of the works and applying the rates and prices in a Schedule of Prices can be specified in Particular Conditions.
Risk Allocation	The General Conditions allocate the risks between the parties on a fair and equitable basis: taking account of such matters as insurability, sound principles of project management, and each party's ability to foresee, and mitigate the effect of, the circumstances relevant to each risk.	The General Conditions allocate the risks between the parties on a fair and equitable basis: taking account of such matters as insurability, sound principles of project management, and each party's ability to foresee, and mitigate the effect of, the circumstances relevant to each risk.	Disproportionately more risks are allocated to the Contractor under the General Conditions. Tenderers will require more data on hydrological, sub-surface and other conditions on the Site, to the extent that this data is relevant to the particular type of works, and more time to review the data and evaluate such risks.

Note:³²

A3.7.6 FIDIC Short Form of Contract Green Book 1999

FIDIC Short Form of Contract (the “Green Book”) was issued in 1999. This Contract recognized the need for simpler and shorter contracts to suit projects with a relatively low Contract Price and short time duration.

This form of Contract provides for a greater degree of flexibility, and follows the same layout as the other forms of contract in the Rainbow Suite. It has only fifteen clauses within a total of ten pages. The clauses are short and easily understood; whilst design can be carried out by either party. An Engineer is not required, but the Employer may appoint a Representative. Payment can be made on either a lump sum or re-measurement basis.

As with the major forms of Contract, this short form of contract includes guidance notes (noted as not forming part of the Contract) as well as an Agreement together with its Appendix and Rules for Adjudication. The noticeable feature is the absence of Particular Conditions because FIDIC is of the view that the Green Book can work without such conditions. However, a cautionary note is provided that the Employer may amend the draft form of Contract to include Particular Conditions where the Employer deems it necessary.

A3.7.7 FIDIC Form of Contract for Dredging and Reclamation Works - Blue Book 2006

This form of contract is designed specifically for use in connection with dredging and reclamation projects. It is similar to the FIDIC Short Form of Contract (the Green Book) but differs from the major forms in many ways. The most important difference is that it

³²Extracted from the FIDIC Contracts Guide First Edition 2000.

was drafted in close collaboration with the International Association of Dredging Companies (IADC) and as such has a great input from Contractors from the outset. The current version of the Form of Contract for Dredging and Reclamation Works is the first edition issued in 2006.

The Blue Book is like the Green Book in that it is abbreviated and flexible. The general conditions in the Blue Book are only 16 pages and 15 clauses long. The format has also changed from the major forms in that the agreement and appendix to the contract are now found in the first section of the contract.

The Blue Book separates dredging from other works and removes any obligation on the Contractor to remedy any dredging work defects after completion of the Works, as stated in the taking-over certificate. The Blue Book also makes another dredging-specific amendment to the Green Book by including 'climatic conditions more adverse than those specified in the Appendix' as an additional event of force majeure.

Similarities with other forms of Contract are in the inclusion of standard forms, such as securities, a section on adjudication (a one or three person DAB) with rules and the adjudicator's agreement and the all-important guidance section.

The Engineer is still recognized within the contract. However, design responsibility can rest with either the Employer (and it's Consultant) or the Contractor. Payment terms are extremely flexible and a list of options, such as lump sum, re-measurement, and cost plus are all noted within the appendix.

It is perhaps apparent that a greater input of a Contractor's organization has influenced some of the general conditions, as has perhaps the use of other forms within the industry as a whole:

- i. Notices by the Contractor in respect of a claim must be given within 28 days but there is no fatal provision;
- ii. Claim items are listed as defined risks which may entitle the Contractor to monetary compensation or extensions of time;
- iii. The defined risks, recognizing the likely impacts of whether upon the Contractor's ability to make progress, potentially soften the usual clause wording on one hand, entitling the Contractor to make a claim if "any operation of the forces of nature affecting the Site/and or the Works", which was unforeseeable or against which an experienced Contractor could not reasonably have been expected to take precautions" but give the Employer (and contractor) less room for debate by also defining the employer's risk to be "climatic conditions more adverse than those specified in the Appendix"; and
- iv. If disputes are not settled amicably they are to be settled by referral to adjudication by a DAB and, if the parties are dissatisfied with the DAB's decision (or if no decision is made within the set timescale) the dispute can be referred by the parties to Arbitration.

The Blue Book is a model of a contract drafted by those with a particular section of the industry in mind and with the knowledge to incorporate the necessary variations to standard forms that may have been considered for use in the past.

However, there is a concern regarding the vesting of plant provisions in the Blue Book. Historically, vesting of plant provisions have been included in construction contracts to

grant rights to an employer to gain title to use and/or sell the Contractor's equipment in the event of termination for Contractor default or insolvency. Such vesting provisions have caused problems not just on the Contractor side, where the value of the remaining work may be less than the investment held in the equipment, but also on the Employer's side where its insurance and/or expertise does not cover the operation of such equipment. These problems are particularly serious in the context of high-value dredging/reclamation projects which require specific expertise and make a Contractor default a devastating prospect.

The Blue Book does nothing to address the contractor's concerns about this issue. In the event of termination for Contractor default or insolvency, the Blue Book provides that the Contractor must leave behind all materials and equipment, until the completion of the Works. The Employer, however, does not have the right to sell the Contractor's equipment to recover outstanding monies. Additionally, the Employer is not permitted to take over the obligations of a third-party entity which owns the equipment (that is, the lessor of the dredging vessel) and repay hire charges. This would cause significant concern to a Contractor as the obligor under a hire or hire purchase contract.

A3.7.8 FIDIC Form of Contract for Design, Build and Operate - Gold Book 2008

The FIDIC Conditions of Contract for Design, Build and Operate (DBO) Projects or 'Gold Book' combines design-build obligations with a long-term concession arrangement which requires the Contractor to complete and maintain and operate the facility during the concession period up to (20 years).

The Gold Book is used when the Employer does not have knowledge, expertise and competent staff to carry out operation and maintenance functions in certain special projects such as desalination plants. Also use of Gold Book is advantageous if there are concerns regarding availability and cost of spare parts and consumables for any plant or equipment involved.

FIDIC has allowed Employers/owners to outsource and change the scope of contractors who are now operators too. Any potential disputes between contractors carrying out a design and build contract to questionable standards leading to poor performance, defects and disputes whilst leaving the Employer to struggle through a 20 year life time of a plant have, potentially, been negated given the obligation of the Contractor to maintain the plant for 20 years. This requires the parties however, to be willing and able to act responsibly towards each other and ensure that a balance is struck between the construction and operation elements of the contract.

The Contract's key features are:

- i. Design, build plus operation and maintenance for 20 years by the contractor;
- ii. Design and build phase risk allocation similar to the Yellow Book with exacting completion criteria but also a cut-off date should the contractor be 182 days late leading to termination if desired;
- iii. Payment on a lump sum basis but includes a schedule of the type of assets that can be replaced and the timing and costs of asset replacement. Costs of replacing plant and equipment outside of the schedule will be borne by the Contractor, as is a cost that exceeds the amount indicated in the schedule. Any surplus in the fund at the end of the twenty years is divided equally;

- iv. The Employer is entitled to deduct 5% from payments during the “operation service period” (OPS) in case the Contractor does not fulfill its maintenance obligations. The fund is to be released, if not spent, within the final payment to the Contractor. The Contractor being responsible for its own defects arising from design and construction in this period;
- v. An independent audit body is jointly appointed for the duration of the OPS to monitor the performance of the Contractor and Employer. Whilst having no power, the parties are intended to give “due regard” to matters raised by the audit body;
- vi. A joint inspection is required at least two years before the end of the OPS; any works identified must be carried out by the Contractor who will also face completion tests similar to those at the end of the design and build phase. Defaulting Contractors risk losing the 5% maintenance retention fund; and
- vii. A standing DAB is established from a set date for the design and build phase and a new one every 5 years during the OPS.

The key to success appears to be with the contractor who must design and build a quality plant with low operating and maintenance costs; fit for purpose and built to last. The Gold Book’s approach is to award a single contract to a single contracting authority, such as a consortium or joint venture, so as to optimize the co-ordination of innovation, quality, and performance. This single-contract approach was intended to encourage Contractors to focus on the lifespan costs of the facility, the rationale being that if the contractor is responsible for long-term operation it is in his interest to design and build a quality plant with low operation and maintenance costs.

The Gold Book, therefore, combines design and construction with long-term operation and maintenance. The design-build portion widely replicates the Yellow Book and following commissioning testing, a long-term (20 years minimum) operation and maintenance period triggers, during which the Contractor must achieve various operational targets and return the plant to the Employer in an agreed condition.

This gives the Employer the assurance that the facility will remain in good operating condition for the duration of the contracted period and is particularly helpful in countries where the Employer cannot provide a suitable workforce. It is critical that the parties do their utmost to co-operate for the prolonged period of the contract and to facilitate this there are new provisions dealing with adjustments for ‘changes in technology, new materials or products’ (rather than just changes in ‘law’ and ‘costs’ as in the Yellow Book). This is a prudent inclusion given the inevitable change in technologies over such a long period.

A3.7.9 FIDIC Form of Subcontract for Construction 2011

FIDIC Conditions of Subcontract for Construction which was published in 2011 is intended to be used with the Red Book and the Pink Book. This contract seeks to be back to back with the Red/Pink Book, in this respect selected highlights or lowlights are:

- The subcontractor is required to complete its scope of works such that no act or omission shall constitute or cause a breach under the Red Book;
- The contractor is entitled to make a “fair decision” in respect of its claims towards the subcontractor and deduct monies accordingly;

- Payments are back to back (where legal to do so) such that subcontractors may find contractors using this as a shield to avoid paying for their own problems;
- The subcontractor is apparently responsible for the care of its works until the main contract works are taken over. This situation will always require careful management whatever the form of contract; and
- Notice provisions are passed through to the subcontractor but with a reduction in time to 21 days to allow the contractor to fulfill its obligations under the main contract.

This form of subcontract allows fair payment provisions for the subcontractor for all liabilities of the contractor whilst obliging the subcontractor to allow the contractor to make claims upwards.

A3.7.10 FIDIC Model Services Agreement for Consultancy Services - White Book 2006

FIDIC has published “Client/Consultant Model Services Agreement” in 2006, for contracts between a client and a consultant which is called White Book.

The White Book was drafted to create conditions of agreement that would span the life cycle of an engineer’s or consultant’s involvement. It is suitable where proposals for such services are invited on either an international or domestic basis.

Accordingly the document is suitable for use during:

- i. Pre-investment and feasibility studies;
- ii. The design phase; and
- iii. The administration of a contract including supervision of the construction.

As with other FIDIC contracts there are both general and particular conditions of contract that when combined set out the scope of the consultant’s work, payment terms and the like. The White Book incorporates the same financial protection as afforded to Contractors in that the consultant too can ask the Client (as opposed to the Employer) if it has the ability to pay the Consultant’s fees.

While the White Book addresses the typical issues in a consultancy agreement, it is generally weighed more in favour of the consultant. One such example is the consultant’s obligation to undertake the ‘performance of his obligations under the agreement’ using reasonable skill, care and diligence. However, this would not meet the reasonable expectations of an Employer who would expect to be able to strictly enforce certain contractual obligations such as the duty to commence on the date of commencement, the duty to take out professional indemnity (PI) insurance and to promptly notify the client of a change in circumstances.

Similarly, key personnel proposed by the consultant are subject to acceptance by the Employer. However, there is no obligation on the consultant to retain personnel for the duration of the project. A prudent Employer would ensure that the consultant will not remove personnel without their consent. Further imbalances in favor of the consultant exist in relation to insurance, indemnities, and compensation.

The White Book serves as a useful addition to the FIDIC portfolio for added consistency across project contracts, but Employers may make amendments to suit their specific requirements.

A3.8 ICTAD Forms of Contracts

ICTAD has published five different forms of contracts as follows:

- i. ICTAD/SBD/1 Works Contracts (2nd Edition, January 2007);
- ii. ICTAD/SBD/2 Major Contracts (2nd Edition, January 2007);
- iii. ICTAD/SBD/3 Minor Contracts (2nd Edition, January 2007);
- iv. ICTAD/SBD/4 Design & Build Contracts (1st Edition, May 2003); and
- v. ICTAD/CONSULT/01 Standard Conditions of Engagement (August 2002).

ICTAD has recommended ICTAD/SBD/1 for use on contracts of estimated contract amount between Rs 10 million and 100 million and for contracts of higher contract amounts but not of complex nature. ICTAD/SBD/2 has been recommended for major works contracts of estimated contract amount more than 100 million and for contract with lesser value but are of a complex nature. ICTAD has recommended ICTAD/SBD/3 for minor works contracts of estimated contract amount less than 10 million. ICTAD has recommended ICTAD/SBD/4 for design and build contracts.

A3.8.1 ICTAD/SBD/1 Works Contracts

This form of contract is intended for medium scale domestic contracts with works designed by the Employer or his consultant and contract administration is carried out by an Engineer appointed by the Employer under the contract. This form of contracts includes general conditions of contract which should be read in conjunction with a set of Contract Data. There are sixty four clauses within five sections from A to E, in the general conditions of contract.

A3.8.2 ICTAD/SBD/2 Major Works Contracts

This form of contract is intended for major domestic works contracts with works designed by the Employer or his consultant and contract administration is carried out by an Engineer appointed by the Employer under the contract. It closely follows FIDIC Red Book 1999 with several deviations including changes to numbering of clauses (e.g. Numbers of clauses involving “Force Majeure” and “Claims, Disputes and Arbitration” are interchanged) and important changes are:

- i. Removal of Sub-Clause 2.4: “Employer’s Financial Arrangements” in the Red Book from ICTAD/SBD/2;
- ii. Removal of Sub-Clause 3.4: “Replacement of the Engineer” in the Red Book from ICTAD/SBD/2;
- iii. Removal of Sub-Clause 4.19: “Electricity, Water and Gas” in the Red Book from ICTAD/SBD/2;
- iv. Removal of Sub-Clause 4.20: “Employer’s Equipment and Free-issue Materials” in the Red Book from ICTAD/SBD/2;
- v. Removal of Sub-Clause 6.1: “Engagement of Staff and Labour” in the Red Book from ICTAD/SBD/2;

- vi. Removal of Sub-Clause 7.1: “Manner of Execution” in the Red Book from ICTAD/SBD/2;
- vii. Replacement of “Delay Damages” in Sub-Clause 8.4: in the Red Book by “Liquidated Damages” in the ICTAD/SBD/2;
- viii. Addition of new Sub-Clause 8.13: “Management Meetings” to ICTAD/SBD/2;
- ix. Removal of Sub-Clause 10.4: “Surfaces Requiring Reinstatement” in the Red Book from ICTAD/SBD/2;
- x. Removal of Sub-Clause 11.7: “Right of Access” in the Red Book from ICTAD/SBD/2;
- xi. Removal of Sub-Clause 13.4 “Payment in Applicable Currencies” in the Red Book from ICTAD/SBD/2;
- xii. Removal of Sub-Clause 14.4: “Schedule of Payments” in the Red Book from ICTAD/SBD/2;
- xiii. Removal of Sub-Clause 14.15: “Currencies of Payment” in the Red Book from ICTAD/SBD/2;
- xiv. Removal of Sub-Clause 17.5: “Intellectual and Industrial Property Rights” in the Red Book from ICTAD/SBD/2;
- xv. Removal of Sub-Clause 17.6: “Limitation of Liability” in the Red Book from ICTAD/SBD/2;
- xvi. Clause numbers 19 and 20 involving “Force Majeure” and “Claims, Disputes and Arbitration” are interchanged;
- xvii. Removal of mandatory notification requirement in the Sub-Clause 20.1 Contractor’s Claims of the Red Book from Sub-Clause 19.1 of ICTAD/SBD/2; and
- xviii. Dispute Resolution Process stated in the Sub-Clauses 20.2 to 20.8 of the Red Book is entirely changed in Sub-Clauses 19.2 to 19.5 in the ICTAD/SBD/2.

A3.8.3 ICTAD/SBD/3 Minor Works Contracts

This form of contract is intended for small scale domestic contracts where the works are designed by the Employer or his consultant and contract administration is carried out by an Engineer appointed by the Employer. This form of contracts includes general conditions of contract which should be read in conjunction with a Schedule which includes contract data. There are fourteen clauses in the general conditions of contract in this document.

A3.8.4 ICTAD/SBD/4 Design & Build Contracts

This form of Contract is intended for design and build contracts with works designed by the Contractor and contract administration is carried out by an Engineer appointed by the Employer. This form of contracts includes general conditions of contract which should be read in conjunction with a set of Contract Data. It closely follows FIDIC Yellow Book 1999 with few deviations including changes to numbering of clauses (e.g.

Numbers of clauses involving “Force Majeure” and “Claims, Disputes and Arbitration” are interchanged).

A3.8.5 ICTAD/CONSULT/01 Standard Conditions of Engagement

This form of contract is intended to be used in contracts between Clients and consultants involved in construction projects and can be used to engage consultants for feasibility studies, designs, contract administration and construction supervision. These Standard Conditions of Engagement include general conditions of contract which should be read in conjunction with Part II which includes conditions particular to the specific contract. There are nine clauses, in the general conditions of contract in this document.

A3.9 Forms of Contracts Recommended/Published by ADB

ADB has recommended/published the following Standard Bidding Documents (SBD)/User Guides for different forms of contracts:

- i. SBD Works-Small for Small Contracts;
- ii. SBD Plant for Plant –Design & Supply and Installation/Build Contracts; and
- iii. SBD Works for Construction Contracts.

Above SBDs contain not only Conditions of Contracts but also guidelines and other documents necessary for the procurement process such as Instructions to Bidders, Bid Data Sheet and Evaluation and Qualification Criteria.

A3.9.1 SBD Works-Small

This form of contract has been prepared by the ADB for use in smaller contracts valued at generally less than \$10 million. This contract is generally based on the Conditions of Contract of the World Bank's Standard Bidding Documents for Procurement of Works, Smaller Contracts, December 2012. General Conditions included within this form of contract should be read in conjunction with the Particular Conditions of Contract.

The main features of this Contract can be summarized as follows:

- i. This document is for contracts in which the Contractor constructs the Works in accordance with design provided by the Employer. It can also be used for contracts that include, partly or wholly, Contractor-designed civil, mechanical or electrical works;
- ii. This document can be used for lump sum payment contracts as well as for small unit price contracts subject to inclusion of certain modifications in particular conditions;
- iii. This document can be used for contract in which the design works are to be carried out by the Contractor;
- iv. This form of contract requires the Employer to appoint a Project Manager (to carry out functions of the Engineer in FIDIC forms of contracts) to administer the contract and perform construction supervision; and
- v. General Conditions included within this form of contract have seventy nine clauses.

A3.9.2 SBD Works

The SBD Works must be used for the procurement of works contracts under international competitive bidding, financed in whole or in part by ADB unless ADB agrees to the use of other bidding documents acceptable to ADB.

The SBD Works make use of the Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, Multilateral Development Bank Harmonized Edition (FIDIC MDB Harmonized edition 2010 – Pink Book), prepared by the FIDIC, major features of which have already been explained under the sub paragraph **A3.7.2**.

A3.9.3 SBD Works

SBD Plant documents must be used for all contracts for plant works under international competitive bidding, which are financed in whole or in part by ADB, unless ADB agrees to use any other document acceptable to ADB.

The Conditions of Contract in this form of contract are based on the Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA). General Conditions included within this form of contract should be read in conjunction with the Special Conditions of Contract. This document is intended to be used when:

- I. The contract involves design, supply, installation and commissioning of specially engineered plant and equipment, such as turbines, generators, boilers, pumping stations and process and treatment plants;
- II. Value of the plant and equipment represents the major part of the estimated contract value; and
- III. Plant and equipment are so complex that they cannot be safely taken over by the Employer without comprehensive testing, pre-commissioning, commissioning and acceptance procedures being followed.

The main features of this Contract can be summarized as:

- i. This document is for contracts in which the Contractor is responsible for design, manufacture, delivery, installation, testing, commissioning and training involved in the contract. It can also be adapted for contracts where certain activities such as parts of the preliminary designs or site preparation works are carried out by the Employer or his consultant;
- ii. This document can be used for lump sum contracts as well as for small unit price contracts subject to inclusion of certain modifications in particular conditions;
- iii. This form of contract requires the Employer to appoint a Project Manager (to carry out functions of the Engineer in FIDIC forms of contracts) to administer the contract and perform construction supervision; and
- iv. General Conditions included within this form of contract have forty five clauses.

ANNEX 4

ANNEXE 4 – REQUIREMENTS OF FUNDING AGENCIES

A4.1 Requirements Of Funding Agencies

For contracts fully or partially financed by funding agencies such as ADB, World Bank, JICA and SIDA, it is necessary to comply with certain requirements imposed by such agencies through various documents. Therefore, it is important for staff of EA/IA involved in the implementation of projects financed by such agencies to have basic knowledge of the funding agency's requirements during the project implementation stage.

A4.2 The staff should ensure that the basic documents of the project are available on hand for reference.

In case of ADB, the basic documents are:

- i. Financing agreement (Loan agreement, Grant Agreement).

Financing agreement sets, among other things, the amount to be financed and the expiry date of financing. It also defines the purpose of the project and allocation of funds per category. The category allocation shall be modified as necessary. It may contain certain loan covenants which the Borrower is expected to fulfill.

- ii. Project Administration Guide (PAM).

PAM describes, among other things, responsibility of organizations who are involved in the project, cost breakdown, Procurement Plan and NCB Annex. It is important to know that Procurement Plan needs to be updated annually during the project implementation.

A4.3 Other important and useful documents for reference are:

- I. Procurement Guidelines;
- II. Guidelines on the Use of Consultants;
- III. Standard Bidding Documents;
- IV. Guide to Bid Evaluation; and
- V. Project Administration Instructions.

All documents listed in A4 are available on the ADB website.³³ It should be noted that these documents are revised/updated from time to time. Thus, users should ensure that they use the latest version of such documents to avoid potential confusions.

A4.4 When a contract approved by ADB needs any modification, the **Procurement Guidelines** require the borrower to seek ADB's no objection in advance (except in cases of extreme urgency) if such change "would in aggregate increase the original amount of the contract by more than 15% of the original price. The Guidelines also state that "A copy of all amendments to the contract shall be furnished to ADB for its record."

³³ Refer www.adb.org

- A4.5** When any contract dispute occurs with a contractor, it is recommended to report it to the funding agency. Despite the funding agency does not having any direct contractual relationship with the contractor, it may facilitate the dispute resolution process to find mutually acceptable solutions in a view of smooth implementation of projects.
- A4.6** It should be noted that funding agencies' regulations and requirements are evolving as indicated above thus making revisions of such regulations and requirements inevitable. Although experience and knowledge regarding requirements of these agencies are important, such knowledge might soon become outdated. It is highly recommended to establish close communication links and good relationships with the staff of funding agency. Early consultation will save time significantly and avoid unnecessary /abortive work.

Section 2

Procedures to be Followed

This Section provides a documented system of procedures, structured to follow the flow of activities in a typical contract by identifying such important activities in each stage and discussing each in a contractual context, including likely scenarios which may arise; and providing direction on actions to manage such situations. The procedures provided in this Section are divided into four stages; mobilization stage, executing stage, completion stage and multi-tiered dispute resolution process and includes all activities which are to be performed by the Employer and the Engineer to a contract and their representatives/assistants, during the life cycle of a contract, from inception of a contract by issuing the Letter of Acceptance/Award to the contractor, to close out of the contract and handing over of completed works to the operations and maintenance division.

These procedures explain activities involved in Contract Management and assignment of responsibility and authority for carrying out each major step in such activities.

Requirements stated in these procedures include contractual requirements/obligations which are mandatory in accordance with the terms of the contract and regulatory requirements which are also mandatory in accordance with the Procurement Guide, Procurement Guidelines and certain circulars. These procedures also include requirements which are based on good practices and possible pitfalls.

Section 2
Procedures to be Followed

Section 3
Forms and Formats

Part One

MOBILIZATION STAGE

CONTENT OF PROCEDURES - MOBILIZATION STAGE

Procedure No.	Procedure	Revision Status	Date
CA01	Letter of Acceptance/Award	B	8 Sept 2015
CA02	Formation of Project/Contract Management Team	B	8 Sept 2015
CA03	Handing Over of Documents/Information Relevant to the Contract to CM Team	B	8 Sept 2015
CA04	Reviewing of Draft Contract Agreement and Bid Documents	B	8 Sept 2015
CA05	Drafting and Signing of Contract Agreement	B	8 Sept 2015
CA06	Orientation Training on Contract Management to Project Staff	B	8 Sept 2015
CA07	Commencement of Contract	B	8 Sept 2015
CA08	Evidence of the Employer's Financial Arrangement	B	8 Sept 2015
CA09	Appointment of the Engineer	B	8 Sept 2015
CA10	Delegation of Engineer's Authority to Engineer's Representative / Assistants	B	8 Sept 2015
CA11	Establishment of the Document/ Correspondence Management System	B	8 Sept 2015
CA12	Handing over of Site Possession	B	8 Sept 2015
CA13	Handing over of Survey Control Points and Bench Marks	B	8 Sept 2015
CA14	Kick-off Meeting	B	8 Sept 2015
CA15	Establishment of Communication Modes and Addresses	B	8 Sept 2015
CA16	Authority Approvals	B	8 Sept 2015
CA17	Review of Work Program	B	8 Sept 2015
CA18	Review of Cash Flow Forecast	B	8 Sept 2015
CA19	Delegation of Authority	B	8 Sept 2015
CA20	Performance Bond	B	8 Sept 2015
CA21	Review of Insurance	B	8 Sept 2015
CA22	Establishment of Payment Procedure	B	8 Sept 2015
CA23	Advance Payment Guarantee	B	8 Sept 2015
CA24	Advance Payment	B	8 Sept 2015
CA25	Arrangement for Establishing Dispute Board	B	8 Sept 2015
CA26	Approval Procedure for Contractor's Site Establishment	B	8 Sept 2015
CA27	Approval for Sub-Contractors	B	8 Sept 2015
CA28	Appointment of Nominated Sub-Contractors	B	8 Sept 2015
CA29	Review of Method Statements	B	8 Sept 2015
CA30	Approval for Materials Including Samples	B	8 Sept 2015
CA31	Handing of Employer's Free Issue Materials	B	8 Sept 2015
CA32	Acceptance of Daily Report Format	B	8 Sept 2015
CA33	Acceptance of Contractor's Monthly Statement Format	B	8 Sept 2015
CA34	Acceptance of Monthly Progress Report Format	B	8 Sept 2015
CA35	Issuing of Drawings and Instructions	B	8 Sept 2015
CA36	Acceptance of Formats for Returns of Labour/Equipment	B	8 Sept 2015
CA37	Review of Quality Assurance System and Quality Plans	B	8 Sept 2015

PROCEDURES CA01 TO CA 37

PROCEDURE NO.	CA 01		
PROCEDURE TITLE	LETTER OF ACCEPTANCE/AWARD		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out prior to and after the Issuing of Letter of Acceptance/Award and content of the Letter of Acceptance/Award.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built form of Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Before sending the Letter of Acceptance/Award to the Contractor the Project Director or the Project Manager shall ensure that:
 - a. Prior approval for the award of the contract is obtained from relevant authority (Cabinet of Ministers, Secretary of the line ministry or Project Director as the case may be) and Attorney General's clearance is obtained for the finalized draft of contract document if there are any concerns on legal issues.
 - b. Prior approval for the award of the contract is obtained from the funding agency/agencies.
 - c. all prior approvals/clearances from regulatory authorities such as RDA, UDA, Irrigation Department and CEA are obtained;
 - d. All encumbrances are cleared and acquisitions of lands, possession of which are to be handed over to the contractor, are completed; and
 - e. Budgetary provisions are available, financing arrangements have been made, adequate funds are available and disbursement mechanisms are in place and effective for making payments under the contract.
2. The Project Director or Project Manager shall ensure that ;
 - a. The Letter of Acceptance is issued within the validity period of the bid.
 - b. The Letter of Acceptance is issued by the duly authorised person.
 - c. The Letter of Acceptance/Award clearly indicate the Accepted Contract Amount in relevant currencies, including any contingency amounts allocated for general and specific provisions such as adjustment for change in cost and cost of diversion of utilities. VAT should be itemized separately.
 - d. The Letter of Acceptance/Award includes a list of documents constituting the contract with their order of priority, if there are new documents forming the Contract, which were not envisaged at the time of preparing bidding documents, such as addenda, MOUs.

3. The Letter of Acceptance/Award:
 - a. Shall not include any new conditions unless previously agreed by parties and such agreements reached between parties have been formalized through a Memorandum of Understanding (MOU).
 - b. Shall be signed by the proper authority (Chairman/GM/PD as the case may be).
 - c. Shall be copied to the relevant authorities as may be deemed appropriate such as Secretary of the line ministry, Chairman Procurement Committee, Chairman, GM, Project Director, Funding Agency, relevant Director /ERD, Director General of Public Finance/General Treasury, Director General/External Resources Department, CIDA, Auditor General and the Commissioner General of Inland Revenue.
 - d. May include requirements for the Contractor to carry out certain activities such as submission of an environmental action plan (when the contract involves environmentally sensitive activities or locations) within a specified time frame.
4. The Project Director or Project Manager shall ensure that there are no discrepancies that exist between contractual requirements reiterated in the Letter of Acceptance and contractual requirements stated in other documents constituting the contract.
5. Issuing of the Letter of Acceptance/Award triggers, start of time periods within which some contractual obligations as listed below are to be fulfilled:
 - a. Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. (FIDIC Sub-Clause 1.6).
 - b. The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance. (FIDIC Sub-Clause 4.2).
 - c. If the total advance payment and payment modalities are stipulated in particular conditions the Employer is required to pay a mobilization payment/advance payment to the contractor ONLY upon receipt of the advance payment guarantee and performance security which fulfils the requirements stated in the contract (FIDIC 14.2). The first instalment of the advance payment must be made within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later. (FIDIC Sub-Clause 14.7).
 - d. Engineer's instruction to commence Works shall be issued to the Contractor within 180 days from the date of receipt of the Letter of Acceptance by the contractor. (FIDIC Pink Book Sub-Clause 8.1) Failure to do so entitles the Contractor to terminate the Contract.

REFERENCES

Government Procurement Manual

Sub Sections 8.7 and 8.9.1

Government Procurement Guide

Sub Sections 8.7.1

(General Conditions of Contract –Pink Book)

Sub-Clause 1.1.1.3

Sub-Clause 1.1.4.1

Sub-Clause 1.5 [Priority of Documents]
Sub-Clause 1.6 [Contract Agreement]
Sub-Clause 4.2 [Performance Security]
Sub-Clause 8.1 [Commencement of Works]
Sub-Clause 18.1 [General Requirements for Insurances]

ATTACHMENTS

Checklists

CL/CA 01/ 01 - Pre- Award Checklist

Specimen Letters

SL/CA 01/ 01 – Letter of Acceptance/Award

PROCEDURE NO.	CA 02		
PROCEDURE TITLE	FORMATION OF CONTRACT MANAGEMENT TEAM		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to formation of the contract management team through utilizing in-house human resources and recruiting outsiders when suitable personnel are not available within the Public Entity.

APPLICABILITY

This procedure is applicable to any major contract to be awarded by any Public Entity.

ACTIONS REQUIRED

1. The Project Director depending on the size and type of the Contract, shall determine competency level, experience and number of staff required to establish the Contract Management Team which shall consist of Project Managers, Chief Engineers, Senior Engineers, Quantity Surveyors, Engineering Assistances and supporting staff.
2. The Project Director shall identify potential candidates available within the Public Entity for positions in Contract Management Team through inviting applications and conducting interviews. Project Director shall make a request to the relevant authority for release of the persons selected and assign them to the project.
3. If there are no suitable candidates available for any of such positions within the Public Entity, the Project Director shall seek the approval of the relevant authority to recruit such personnel on contract basis in accordance with Management Services Circular No. 33 of 2007 and subsequent amendments.
4. Appointment to all positions shall be made only after calling for applications by open advertisements followed by interviews.
5. The Contract Management Team shall function under the direct supervision of the Project Director and shall be responsible for attending to contractual matters such as contractual obligations of parties, management of variations, management of claims, dispute resolution and drafting of responses for contractor's letters relevant to contractual matters

REFERENCES

Management Services Circular No. 33 of 2007

ATTACHMENTS

Specimen Formats

SF/CA 02/ 01 – Identification of Key Staff Requirements

Specimen Letters

SF/CA 02/ 01 – Letter to GM Requesting Release of In-house Staff

PROCEDURE NO.	CA 03		
PROCEDURE TITLE	Handing Over of Documents/Information Relevant to The Contract to CM Team		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers taking copies of documents and other information which are related to feasibility studies, environmental studies, design stage and procurement stage and would include reports, drawings, minutes of meetings, correspondences with bidders and loan agreements with funding agencies.

APPLICABILITY

This procedure is applicable to any contract to be awarded by any Public Entity.

ACTIONS REQUIRED

1. Project Director shall obtain following documents and handover a set of copies to the Contract Management Team:
 - a. Contract Documents.
 - b. Feasibility Study Reports.
 - c. Environmental Impact Assessment Reports.
 - d. Resettlement Action Plans and information on land acquisition.
 - e. Letters from authorities giving approval for the project.
 - f. Loan Agreements with funding Agencies.
 - g. Survey plans.
 - h. Hydrological/drainage reports.
 - i. Rainfall records for the project area.
 - j. Coastal Hydraulic Reports and model study reports.
 - k. Soil investigation logs and reports.
 - l. Material Testing reports.
 - m. As built information/drawings of previous constructions in same area including GIS.
 - n. Information on utility positions in the area including GIS.
 - o. Design Reports and design drawings.
 - p. TEC and CAPC/MPC/PPC reports.
 - q. Memoranda and decisions of Cabinet of Ministers approving the award.
 - r. Project Management and Contract Management Guide.
2. The Project Manager or Chief Engineer shall obtain above documents/information and make arrangements to establish a library for such documents/information upon making an inventory with the assistance of the Project Secretary.
3. Project Secretary shall establish and maintain procedures for lending and returning of documents to project staff.
4. Project Secretary shall make digital copies of documents by scanning hard copies to put them in the computerized Document Management system.

5. The Project Manager or Chief Engineer shall make a digital copy of Combined Conditions of Contract by applying changes introduced through Specific Provisions of Particular Conditions Part B and Addendums to General Conditions of Contract. This document shall be considered only as a reference tool but not as a contractual document.
6. All above digitized documents/information shall be available for reference to CM Team members through the Document Management system.

REFERENCES

None

ATTACHMENTSChecklists

CL/CA 03/ 01 – Checklist for taking Over of Documents/Information

Specimen Formats

SF/CA 03/ 01 – Document Inventory

PROCEDURE NO.	CA 04		
PROCEDURE TITLE	REVIEWING OF DRAFT CONTRACT AGREEMENT AND OTHER DOCUMENTS CONSTITUTING THE CONTRACT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to reviewing of the draft Contract Agreement and other documents constituting the contract

APPLICABILITY

This procedure is applicable to any contract to be awarded by the Public Entity.

ACTIONS REQUIRED

1. Project Director, Project Manager and Chief Engineer's shall review the draft Contract Agreement and other documents forming the contract and take note of provisions which are specific to the contract concerned.
2. Such specific provisions may be highlighted in hard copies with attached tabs and an internal memo shall be prepared for project staff, informing them of such provisions.
3. If there are any ambiguities/ discrepancies between different documents forming the contract, identified during the above review, such ambiguities/ discrepancies shall be interpreted in accordance with priority of documents stated in the contract.
4. If necessary, an Engineer's instruction shall be issued to the Contractor to clarify such discrepancies/ambiguities.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 1.5 [Priority of Documents]

ATTACHMENTS

Specimen Letters

SL/CA 04/ 01 – Memo to Staff on Specific Provisions and Ambiguities in Contract Documents

SL/CA 04/ 02 – Engineer's Instructions to Clarify Ambiguities and Discrepancies in Contract Documents

PROCEDURE NO.	CA 05		
PROCEDURE TITLE	Drafting and Signing of Contract Agreement		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out prior to and after the signing of the Contract Agreement and content of the Contract Agreement.

APPLICABILITY

This procedure is applicable to any contract for Works exceeding SLR 250,000 (Sri Lanka Rupees Two hundred and Fifty thousand) which is to be awarded based on Construction or Plant and Design-Built form of Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director / Project Manager shall ensure that the Letter of Acceptance/Award is issued to the Contractor together with the draft Contract Agreement.
2. The Project Director / Project Manager shall make arrangements to sign the Contract Agreement within the stipulated time frames(FIDIC and ICTAD form of Conditions of Contract require the parties to enter into a Contract Agreement within 28 days)upon receipt of the Letter of Acceptance by the Contractor.
3. The Project Director / Project Manager shall ensure that draft Contract Agreement is prepared and required approvals for the same are obtained.
4. The Project Director / Project Manager shall ensure that Power of Attorney for the signatory who is authorized to sign on behalf of the Contractor is obtained and perused by a competent person to ascertain its validity.
5. The Project Director / Project Manager shall ensure that if the Contractor is a Joint venture of two or more companies, their joint venture agreement is submitted and reviewed. JV agreement should authorize a leading partner to manage the Contract and act on behalf of all partners. If JV agreement is found to be inadequate upon review of the same, the Contractor shall be ask to take action to rectify such inadequacies.
6. The Contract Agreement in three originals shall be signed by the relevant authority on behalf of the Employer and the authorized signatory on behalf of the Contractor.
7. Each page of the documents forming the Contract shall be initialled by the relevant authority on behalf of the Employer and the authorized signatory on behalf of the Contractor.
8. One signed original of the Contract Document shall be handed over to the Contractor and another signed original of the Contract Document shall be handed over to the Employer for safe keeping. Other signed original of the Contract Document shall be kept by the Project Director at a safe location upon making several copies for use of the Project Team.

9. If the Accepted Contract Amount exceeds SLR 250,000,000 (Sri Lanka Rupees Two Hundred and Fifty Million), contract award shall be published in at least one widely circulated national news paper, the line ministry website and government gazette. Otherwise contract award shall only be published in the NPA website, line ministry website and/or any other appropriate media.

REFERENCES

Procurement Guidelines

Sub Section 8.9.3

Sub Section 8.10 [Publication of Contract Award]

Procurement Guide

Sub Section 8.9.3 [Execution of Contract]

FIDIC Conditions of Contract MDB 2010

Sub-Clause 1.6 [Contract Agreement]

ATTACHMENTS

Checklists

CL/CA 05/ 01 – Pre- Contract Checklist

Specimen Format

SF/CA 05/ 01 – Contract Agreement

PROCEDURE NO.	CA 06		
PROCEDURE TITLE	ORIENTATION TRAINING ON CONTRACT MANAGEMENT TO PROJECT STAFF		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers planning, preparing and conducting orientation training for project staff at the outset of the project and also to new staff who would join the team during the execution of the project. Orientation training should be planned for each project staff according to his duties and responsibilities and should include training on use of this Guide. Orientation training may include training on Project Management, Contract Management, Quality Assurance, use of Project Management and document Management software and any other specific areas.

APPLICABILITY

This procedure is applicable to any contract to be awarded by a public entity.

ACTIONS REQUIRED

1. The Project Director shall assess the training needs of project staff in Contract Management, based on their qualifications and past experiences in order to better equip them with necessary skills and knowledge to carry out their duties and responsibilities successfully at the initial stage of the contract. The Project Director may consider including consultants' staff in the orientation program if he thinks it would benefit the project execution.
2. The Project Director shall decide on the mode of orientation training to be provided depending on resources and time available. Mode of training may include, self reading of this Guide, in-house training programs and lectures/workshops arranged by Public Entity's Training Division or external organisations.
3. The Project Director shall prepare a training plan for orientation training based on needs identified, resources available and time constraints. Orientation training shall be scheduled at the initial stage of the project when work load is less thus training can be arranged without interfering with duties of the participants.
4. Self reading of the Project/Contract Management Guide shall be carried out under the guidance of a senior team member who has previously participated in the CM training program and following a strict time schedule. The Project Director, Project Manager or Chief Engineer shall decide, what are the relevant procedures the team member shall self study.
5. The Project Director shall arrange resource persons from pool of trainers of the Public Entity, who have been specially trained for the purpose for In-house training programs. The Project Director may utilize any suitable consultant engaged to work in the project as a resource person if available. For the purpose of in-house training, training materials provided with this Guide such as presentations/handouts shall be used upon updating them to improve the content.
6. The Project Director may arrange CM training for his team members with the Public Entity's Training Division or with external organisations such as ICTAD.
7. The Project Secretary shall maintain training records for each member to ensure that they have received adequate training to carry out their duties with confidence. Also a training evaluation form shall be completed by each participant to give feedback on the quality of training they received.

REFERENCES

None

ATTACHMENTSChecklists

CL/ CA 06/ 01 – Checklist to Assign Scope of Self Reading for Orientation Training

Specimen Formats

SF/CA 06/ 01 – Training Record

SF/CA 06/ 02 – Training Evaluation Form

PROCEDURE NO.	CA 07		
PROCEDURE TITLE	COMMENCEMENT OF CONTRACT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out prior to and immediately after the Commencement of the Contract which shall be considered to be the Commencement Date defined in the Conditions of Contract.

Different Contracts give different definitions for the Commencement Date.

FIDIC Conditions of Contract for Construction MDB 2010 (Pink Book)

FIDIC MDB 2010 defines the Commencement Date as the date specified in the Particular Conditions of Contract or on the date at which the Engineer's instruction to commence the Works and the notification recording the agreement of both Parties on fulfilment of certain precedent conditions is received by the Contractor upon all such conditions have been fulfilled.

If the Engineer's instruction to commence the Works and the notification is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor would be entitled to terminate the Contract.

FIDIC Conditions of Contract for Construction 1999 (Red Book) and for Plant and Design-Build 1999 (Yellow Book)

FIDIC 1999 editions of Conditions of Contract for Construction (Red Book) and for Plant and Design-Build (Yellow Book) stipulates that the Commencement Date shall be the date which shall be notified to the Contractor by the Engineer and that date shall be within 42 days upon the receipt of the Letter of Acceptance by the Contractor, unless otherwise stated in the Particular Conditions of Contract. Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date.

ICTAD Conditions of Contract for Major Contracts 2007 (ICTAD/SBD/02)

ICTAD Conditions of Contract for Major Contracts 2007 (ICTAD/SBD/02) stipulates that the Commencement Date shall be the date which shall be notified to the Contractor by the Engineer giving not less than 7 days' notice period and that date shall be within 14 days upon the receipt of the Letter of Acceptance by the Contractor, unless otherwise stated in the Particular Conditions of Contract.

ICTAD Conditions of Contract for Design & Build 2003 (ICTAD/SBD/04)

ICTAD Conditions of Contract for Design & Build 2003 (ICTAD/SBD/04) stipulates that the Start (Commencement) Date shall be a date 14 day after the Letter of Acceptance.

APPLICABILITY

This procedure is applicable to any contract to be awarded by any public entity.

ACTIONS REQUIRED

1. The Contract shall be signed by the parties prior to the issue of the Engineer's instruction to commence Works.
2. The Contractor shall submit the Performance Security to the Employer in accordance with the terms of the Contract, prior to the issuance of the Engineer's instruction to commence Works.

3. Following activities shall be carried out prior to the issuing of the Engineer's instruction to commence Works, by the Project Director as the representative of the Employer:
 - a. If the Engineer is not named in the Contract, the Engineer shall be appointed and the Contractor shall be informed.
 - b. Provide the Contractor with evidence of financial arrangements which will enable the Employer to pay the Contract Price punctually.
 - c. Provide the Contractor with effective access to and possession of the Site, unless otherwise agreed in the Contract
 - d. Issue the Engineer and/or his assistants with copies of all relevant documentation, including all contract documentation, drawings, site investigation reports, survey details, designs and other information.
 - e. Issue the Contractor with copies of the contract document and all other relevant documentation.
 - f. Provide the Contractor with detailed information on survey control points including grid points and benchmarks.
 - g. Ensure that the Contractor receive the Advance Payment (or first instalment of the Advance Payment) prior to the Commencement date, if the Contractor submits the Advance Payment Guarantee within a reasonable time.
 - h. Approve the Contractor's proposed locations for his site office and facilities.
4. Following activities shall be carried out prior to the issuing of the Engineer's instruction to commence Works, by the Engineer for the Contract; Head of the Entity or the Consultant appointed as the case may be:
 - a. The Engineer shall appoint Engineer's Representative/Assistants, and the appointment letter shall include a list of powers and duties which he intends to delegate to his Representative/Assistants.
 - b. The Engineer shall give his consent/objection to the person, the Contractor propose to appoint as the Contractor's Representative, upon reviewing of particulars of the proposed candidate, to ensure such Contractor's Representative is appointed prior to the Commencement Date.
 - c. The Engineer shall ensure that the Contractor carry out dilapidation/condition survey to record existing defects in structures/buildings In the vicinity of the area where adverse impacts of the construction activities are expected to be felt.
 - d. Certify the Advance Payment, if the Contractor submits the Advance Payment Guarantee within a reasonable time, so that the Contractor receive the Advance Payment (or first instalment of the Advance Payment) prior to the Commencement date.
 - e. The Contractor shall be formally issued with all Contract Documentation, drawings, designs and other information, necessary for the Contractor to commence the Works.
5. The Contractor shall provide evidence of having arranged all the required insurance covers prior to commencement of Works.
6. The Head of the Entity, as the Engineer shall issue the Engineer's instruction to commence Works.
7. The Project Director/Project Manager shall ensure that the Contractor submit following information upon receiving the Engineer's Instruction to commence Works:
 - a. Detailed work program within 28 days
 - b. Breakdown of each Lump Sum price in the Schedules/BOQ within 28 days

- c. First quarterly non-binding estimate of the payments which he expects to become due during each quarterly period within 42 days.
- d. Details of procedures and compliance documents with regard to the Contractor's Quality Assurance System
- e. Information on subcontractors he intends to use, for the Engineer's prior consent, if such subcontractors are needed to be engaged from the commencement of the Contract.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 2.4 [Employer's Financial Arrangements]

Sub-Clause 4.3 [Contractor's Representative]

Sub-Clause 8.1 [Commencement of Works]

Sub-Clause 8.3 [Program]

Sub-Clause 14.1 [The Contract Price]

Sub-Clause 14.4 [Schedule of Payments]

ATTACHMENTS

Checklists

CL/CA 07/ 01 – Pre-Commencement Checklist

CL/CA 07/ 02 – Post-Commencement Checklist

Specimen Letters

SL/CA 07/ 01 – Letter Notifying Instruction to Commence Works

PROCEDURE NO.	CA 08		
PROCEDURE TITLE	EVIDENCE OF THE EMPLOYER'S FINANCIAL ARRANGEMENT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to provide evidence to the Contractor of Employer's financial arrangements.

APPLICABILITY

This procedure is applicable to any major contract to be awarded by any public entity based on FIDIC Conditions of Contract.

ACTIONS REQUIRED

1. The Project Director shall ensure that the financing agreement with the financing agency for funding the contract is signed and allocations to fund local component of the contract price is arranged prior to awarding the contract.
2. The Project Director shall also ensure that any loan covenant governing the loan effectiveness is fulfilled to make funds readily available for disbursements.
3. The Project Director shall ensure that the Contractor's bank accounts details are obtained and establishment of mechanisms specified under the financing agreement for disbursement of certified payments to the contractor, have been completed.
4. The Project Director shall submit to the contractor following documents as evidence of Employer's financial arrangements for the contract:
 - a. A copy of financing agreement with the Funding Agency.
 - b. Documents to substantiate fulfilment of loan covenants which are conditions preceding to the loan effectiveness.
 - c. Documents to substantiate establishment of disbursement mechanisms such as an Irrevocable Documentary Credit arrangement.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 2.4 [Employer's Financial Arrangements]

ATTACHMENTS

Specimen Letters

SL/CA 08/ 01 – Letter to the Contractor Informing Employers Financial Arrangements

PROCEDURE NO.	CA 09		
PROCEDURE TITLE	APPOINTMENT OF THE ENGINEER		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to appointment of the Engineer.

APPLICABILITY

This procedure is applicable to any major contract to be awarded by a Public Entity.

ACTIONS REQUIRED

1. Unless the Engineer is named in the Contract, the Head of the Entity shall appoint the Engineer in writing prior to commencement of the Contract and notify the same to the Contractor.
2. When the Employer requires replacing of the Engineer, the Project Director/ Project Manager shall notify the Contractor of the name, address and relevant experience of the intended replacement Engineer, 21 days prior to the intended replacement date.
3. If the Contractor notifies the Employer, raising any objections against the intended replacement Engineer with supporting particulars as evidence of his unsuitability, the Employer should consider such objections fairly.
4. Upon considering such objections raised by the Contractor, the Employer may notify the Contractor of another replacement Engineer, if the Employer agrees with the Contractor's objections.
5. The Employer may appoint the replacement Engineer if he is of the opinion that the intended replacement Engineer is suitable, upon fairly considering the Contractor's objections (if any) and notify the Contractor accordingly.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 3.1 [Engineer's Duties and Authority]

Sub-Clause 3.4 [Replacement of the Engineer] - Not valid for ICTAD contracts

ATTACHMENTS

Specimen Letters

SL/CA 09/ 01 – Letter Appointing the Engineer

SL/CA 09/ 02 – Letter Notifying the Intended Replacement of the Engineer

SL/CA 09/ 03 – Letter Notifying the Appointment of Replacement Engineer

PROCEDURE NO.	CA 10		
PROCEDURE TITLE	DELEGATION OF ENGINEER'S AUTHORITY TO ENGINEER'S REPRESENTATIVE / ASSISTANTS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to appointment of Engineer's Representative and Assistants for a contract and delegation of authority to such Representatives and Assistants.

APPLICABILITY

This procedure is only applicable to any contract to be awarded by any public entity within which Head of the Entity or any other staff member of the Public Entity is named as the Engineer to the Contract.

ACTIONS REQUIRED

1. The Head of the Entity or any other staff member of a public entity as may be deemed appropriate in the circumstances, may be appointed as the Engineer, shall appoint Engineer's Assistants to carry out certain specified duties and exercise certain authorities attributable to him as specified in or to be inferred from the Contract, on behalf of the Engineer. All such appointments, assignments of duties and delegation of authorities shall be in writing and it shall be communicate to the Employer and the Contractor.
2. Engineer's Assistants to be appointed by the Engineer may include Resident Engineers, Design Engineers, Material Engineers, Project Engineers, Quantity Surveyors, Surveyors and Site Inspectors/Supervisors.
3. The Head of the Entity or any other staff member, appointed as the Engineer, shall revoke certain duties assigned and authorities delegated to Engineer's Assistants if there is a need to do so. All such revocation assignments of duties and delegation of authorities shall be in writing and it shall be communicate to the Employer and the Contractor.
4. The Engineer shall not delegate authority to make determinations under the Sub-Clause 3.5 [Determinations] of the FIDIC Conditions of Contract or under the Sub-Clause 3.4 [Determinations] of the ICTAD Conditions of Contract
5. Although any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an Engineer's Assistant, in accordance with the delegation, shall be considered as an act of the Engineer, any failure of the Engineer's Assistants to disapprove unacceptable works, plants or materials, does not prevent the Engineer from disapproving of such works, plants or materials.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 3.2

Procurement Guidelines
Sub Section 5.4.1 (b) (iv)

ATTACHMENTSSpecimen Letters

SL/CA 010/ 01 – Letter of Appointment of Engineer's Assistants

SL/CA 010/ 02 – Letter to Assign Duties and Delegate Authorities to Engineer's Assistants

SL/CA 010/ 02 – Letter to Revoke Authorities Delegated to Engineer's Assistants

PROCEDURE NO.	CA 11		
PROCEDURE TITLE	ESTABLISHMENT OF THE DOCUMENT/ CORRESPONDENCE MANAGEMENT SYSTEM		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to control of documents including incoming and outgoing correspondences. Following are the major categories of documents which are to be controlled:

1. Contract Document
2. Construction Documents
3. Contractual correspondences
4. Contractual records
5. Correspondences with stake holders and regulatory authorities
6. Correspondences with third parties including general public
7. Regulatory documents such as acts, regulations, permits, and licences
8. Institutional documents such as circulars, board papers and guidelines/Guides
9. Standard documents
10. Loan/Grant Agreements and Aide Memoires
11. Reports/Plans such as feasibility reports, EIA reports, Resettlement Implementation Plan, and design reports
12. Text books and reference literature

APPLICABILITY

This procedure is applicable to any major contract to be awarded by the Public Entity.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that the resources required for document storage and filing system and computerized document management system are provided and computerized document management system is installed.
2. The Project Secretary shall ensure that files and storage cabinets/racks which are required to keep originals and hard copies are neatly labelled and arranged to ensure adequate protection and easy retrieval.
3. The Project Director/Project Manager shall ensure that competent and trustworthy people are assigned for registering, filing and storing of documents and inputting data in to computerized document management system.
4. Incoming Correspondences to the Employer
 - a. The Contractor shall be requested to address their contractual correspondence address to the Employer, to the Employer's representative (Project Director/Project Manager).
 - b. The Project Director/Project Manager shall be the first official recipient of all correspondences, with the exception of certain prescribed communications such as submissions for approval of work in progress which, for practical reasons, may be submitted direct to nominated site staff.
 - c. Upon receiving any contractual correspondence from the Contractor, the Project Secretary shall date stamp it and give it a serial/sequential number which shall be marked in the document itself. The Project Secretary shall make copies of the

document and file the original in the Master File for Incoming Documents in the order of the serial/sequential number. One copy of the document shall be filed in the subject file while another copy of the document shall be forwarded to the Project Director/Project Manager for assigning responsibility for actions to be taken by placing minutes on it, upon his review.

- d. When the Project Director/Project Manager assigns responsibility for actions to be taken by a specific staff member or members a copy of the document with the minutes shall be forwarded to the relevant staff members for action.
- e. If a staff member is required to draft a response to the Contractor's letter, such draft shall be submitted to the Project Director/Project Manager for his review and/or comments.
- f. When the Project Director/Project Manager agrees to the draft response with or without comments, the Project Secretary shall revise the letter accordingly, give it a sequential reference number, get it printed on a letter head and submit it for signature of the Project Director/Project Manager.
- g. The Project Secretary shall enter information relevant to the document such as reference number, date and addressee, the title of the letter and reference number of the incoming letter for which the response is prepared, into the outgoing correspondence register and make copies for circulation and for filing in the subject file. The second signed original for office use, shall be filed in the Master File for Outgoing Documents and circulation copy shall be circulated among staff members who have an interest regarding the subject matter contain in the document.
- h. The Data Entry Operator shall enter data relevant to the document such as reference number, date, addressee the title of the letter and reference number of the incoming letter for which the response is prepared, into the computerized Document Management System and a scanned copy of the document in pdf format (portable document format) shall be uploaded in to the computerized Document Management System.
- i. All signed original correspondences to the Contractor shall be delivered to the Contractor's Site Office by hand and its delivery must be acknowledged by signature of a member of the Contractor's staff in a correspondence dispatch book.
- j. All signed original correspondences to the other parties shall be delivered to respective addresses by hand or by post and if delivered by hand, its delivery must be acknowledged by signature of a member of the recipient's staff in a correspondence dispatch book.
- k. The document management system shall provide traceability of documents and means whereby the Project Director/Project Manager can ascertain whether or not incoming correspondence has been responded to, whether replies have been temporarily deferred or whether a response has been overlooked.

5. Incoming Correspondences to the Engineer

- a. The Contractor shall be requested to address their contractual correspondence other than that required to be addressed directly to the Engineer, to the Engineer's Representative/Assistant and not to individual members of staff.
- b. The Engineer's Representative/Assistant shall be the first official recipient of all correspondences, with the exception of certain prescribed communications such as

submissions for approval of work in progress which, for practical reasons, may be submitted direct to nominated site staff.

- c. Upon receiving any contractual correspondence from the Contractor, the secretary shall date stamp it and give it a serial/sequential number which shall be marked in the document itself. The secretary shall make copies of the document and file the original in the Master File for Incoming Documents in the order of the serial/sequential number. One copy of the document shall be forwarded to the Engineer's Representative/Assistant for assigning responsibility for actions to be taken by placing minutes on it, upon his review.
- d. When the Engineer's Representative/Assistant assigns responsibility for actions to be taken by a specific staff member or members a copy of the document with the minutes shall be forwarded to the relevant staff members for action.
- e. If a staff member is required to draft a response to the Contractor's letter, such draft shall be submitted to the Engineer's Representative/Assistant for his review and/or comments.
- f. When the Engineer's Representative/Assistant agrees to the draft response with or without comments, the secretary shall revise the letter accordingly, give it a sequential reference number, get it printed on a letter head and submit it for signature of the Engineer's Representative/Assistant.
- g. The secretary shall enter information relevant to the document such as reference number, date, addressee and the title of the letter into the outgoing correspondence register and make copies for circulation and for filing in the subject file. The second signed original for office use, shall be filed in the Master File for Outgoing Documents and circulation copy shall be circulated among staff members who have an interest regarding the subject matter contain in the document.
- h. The Data Entry Operator shall enter data relevant to the document such as reference number, date, addressee and the title of the letter into the computerized Document Management System and a scanned copy of the document shall be uploaded in to the computerized Document Management System.
- i. The document management system shall provide traceability of documents and means whereby the Engineer's Representative/Assistant can ascertain whether or not incoming correspondence has been responded to, whether replies have been temporarily deferred or whether a response has been overlooked.

6. Outgoing Correspondences to the Contractor

- a. The Project Director/Project Manager shall decide whether there is a necessity to send any correspondence to the Contractor and such correspondences may include instructions, requests, notifications, claims, responses, approvals or declines to approve.
- b. The Project Director/Project Manager shall assign the responsibility for drafting such correspondences to a competent staff member.
- c. When the Project Director/Project Manager assigns responsibility for actions to be taken by a specific staff member, he should brief the relevant staff members regarding content of the draft letter.

- d. The staff member who was assign the task of drafting the letter, shall draft the letter taking in to account contractual obligations of parties and wherever possible reference should be given to clauses or sections in the contract documents. When deciding the title of the letter, it is prudent to include key words within the title to facilitate searching of the document in a computerized document management system.
- e. Upon completion, the draft shall be submitted to the Project Director/Project Manager for his review and/or comments.
- f. When the Project Director/Project Manager agrees to the draft with or without comments, the Project Secretary shall revise the letter accordingly, give it a sequential reference number, get it printed on a letter head and submit it for signature of the Project Director/Project Manager.
- g. The Project Secretary shall enter information relevant to the document such as reference number, date, addressee and the title of the letter, into the outgoing correspondence register and make copies for circulation and for filing in the subject file. The second signed original for office use, shall be filed in the Master File for Outgoing Documents and circulation copy shall be circulated among staff members who have an interest regarding the subject matter contain in the document.
- h. The Data Entry Operator shall enter data relevant to the document such as reference number, date, addressee and the title of the letter, into the computerized Document Management System and a scanned copy of the document in PDF format (portable document format) shall be uploaded in to the computerized Document Management System.
- i. All signed original correspondences to the Contractor shall be delivered to the Contractor's Site Office by hand and its delivery must be acknowledged by signature of a member of the Contractor's staff in a correspondence dispatch book.
- j. All signed original correspondences to the other parties shall be delivered to respective addresses by hand or by post and if delivered by hand, its delivery must be acknowledged by signature of a member of the recipient's staff in a correspondence dispatch book.

REFERENCES

Guide to Document Management system

ATTACHMENTS

Specimen Formats

SF/CA 020/ 01 – Correspondence Register

PROCEDURE NO.	CA 12		
PROCEDURE TITLE	HANDING OVER OF SITE POSSESSION		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out prior to and during handing over of possession of the Site

APPLICABILITY

This procedure is applicable to any contract to be awarded by a Public Entity.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that lands required for the works to be carried out and effective access to such lands are acquired and all encumbrances are cleared prior to the commencement of the Contract or otherwise specified in the Contract. Some contracts stipulate phased handing over of possession of the Site in several stages. For instance, Contracts involving laying of pipelines along road alignments, possession of site will be subjected to conditions imposed by road authorities. When construction activities are to be carried out at a facility/plant in operation, giving full possession of the site is not practical as both operation of the facility/plant and construction activities are to be carried out simultaneously without affecting each other.
2. The Employer may delay the handing over of possession of the site until the Contractor submits Performance Security.
3. When the execution of works involves working in areas controlled by certain authorities, the Project Staff shall liaise with such authorities to ensure smooth handing over of limited possession of such areas to the Contractor to carry out construction works, subject to the Contractor adhere to requirements imposed by such authorities to mitigate safety risks and inconveniences to public.
4. The Project Director/Project Manager shall notify the Contractor of the handing over of possession of the site in advance in writing.
5. The Project Director/Project Manager shall nominate his representative to hand over of possession of the site on behalf of the Employer to a person nominated by the Contractor's representative.
6. Handing over of possession of the site to the Contractor shall be carried out in the presence of representatives of both parties and Handing over record shall be signed by the Project Director/Project Manager and the Contractor's representative.
7. If there are any encumbrances upon handing over of the site to the Contractor, the Chief Engineer or Project Engineer shall take every possible endeavour to clear such encumbrances as soon as possible. In the event clearing of such encumbrances are beyond the control of the Chief Engineer/Project Engineer, Project Director/Project Manager shall be notified immediately. The Project Director/Project Manager shall inform the Steering Committee if there are any encumbrances which could delay the completion of the Contract.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 2.1 [Right of Access to the Site]

ATTACHMENTS

Checklists

CL/CA 12/ 01 – Checklist Handing over of possession of the site to the Contractor

Specimen Formats

SF/CA 12/ 01 – Record of Handing Over of possession of the site to the Contractor

PROCEDURE NO.	CA 13		
PROCEDURE TITLE	HANDING OVER OF SURVEY CONTROL POINTS AND BENCH MARKS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to get reference survey control points and bench marks and information relevant to them from the Survey Department and handing over of the same to the Contractor.

APPLICABILITY

This procedure is applicable to any major contract to be awarded by a Public Entity.

ACTIONS REQUIRED

1. The Project Engineer/Surveyor shall liaise with the Survey Department and obtain information on at least two survey control points and bench marks in close proximity to project area, which could be used as reference for setting out of permanent works. Alternatively the Project Engineer/surveyor may engage Survey Department to establish at least two dedicated survey control points and bench marks for the project in close proximity to the project area. The Project Engineer/Surveyor shall obtain from the Survey Department at least three off sets to each such benchmark and control point from a stable landmark in close proximity.
2. The Project Engineer/Surveyor shall handover to the Contractor, information on survey control points and bench marks including coordinates of control points in reference to National Grid and bench mark levels in reference to National Datum (MSL) and off sets for tying/fixing them to stable landmarks in close proximity. The Project Engineer/Surveyor shall organize a site visit with the Contractor's staff to physically show them the locations at which such benchmarks and control points are located.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 4.7 [Setting Out]

ATTACHMENTS

Specimen Letters

SL/CA 13/ 01 – Letter to the Contractor for Handing Over of Survey Control Points and Bench Marks

Specimen Formats

SF/CA 13/ 01 – Handing Over of Survey Control Points and Bench Marks

PROCEDURE NO.	CA 014		
PROCEDURE TITLE	Kick-off Meeting		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out prior to, during and after the Kick-off Meeting to introduce the project team members and other stakeholders to each other, to brief the participants of salient features of the Contract, to identify potential issues which may adversely affect the progress of the contract, to gain a common understanding of the contract's objectives and priorities and to discuss about ways and means to execute the Contract without any adverse impacts.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director or Project Manager shall decide a suitable date to hold the Kick-off meeting.
2. The Project Director or Project Manager shall identify participants to be invited for the Kick-off meeting, including the Employer's Project Team, Consultant's key personnel, Contractor's key personnel, representatives of statutory Public Entities such as RDA, CEB, LECO, UDA, Irrigation Department and CEA any other individuals or representatives of Public Entities relevant to the Contract.
3. The Project Secretary shall ensure that invitation letters for the kick-off meeting are sent to all identified participant at least a week prior to the said meeting.
4. The Project Secretary shall arrange a venue, presentation aids and refreshments for the Kick-off meeting.
5. The Chief Engineer shall prepare a presentation to provide detailed information on the project/contract to participants
6. The Project Director or Project Manager shall chair the kick-off meeting and present project information to the participants.
7. Introduction of all participants shall be carried out to facilitate cooperation and interaction among them and to establish communication channels.
8. The Project Director or Project Manager shall outline the project goals as well as the individual roles and responsibilities of team members;
9. Participants shall be encouraged to discuss on their expectations, risks involved and potential issues which may adversely affect the execution of the Contract and suitable preventive actions shall be proposed.
10. Discussions during the kick-off meeting shall focus on way forward by addressing concerns with regard to initial contractual requirements/obligations.
11. Any follow up actions required and the individuals responsible for each of them shall be identified and dates by which the actions should be completed shall be fixed.

12. The Project Secretary shall prepare minutes of the Kick-off meeting and forward it to the Chief Engineer for review. Minutes of the Kick-off meeting shall be approved by the Project Director or Project Manager prior to circulation.
13. The Project Secretary shall circulate minutes of the Kick-off meeting to all stakeholders/participants within one week after the meeting.
14. The Project Secretary shall maintain records of comments on minutes received from participants and revised the minutes if necessary.
15. The Project Secretary shall circulate revised minutes of the Kick-off meeting to all stakeholders/participants.

REFERENCES

None

ATTACHMENTS

Checklists

CL/CA 01/ 01 – Kick-off Meeting Checklist

Specimen Letters

SL/CA 014/ 01 – Invitation Letter for the Kick-off Meeting

Specimen Formats

SF/CA 014/ 01 – Agenda for the Kick-off Meeting

SF/CA 014/ 02 – Attendance Record for the Kick-off Meeting

SF/CA 014/ 03 – Minutes of the Kick-off Meeting

PROCEDURE NO.	CA 15		
PROCEDURE TITLE	ESTABLISHMENT OF COMMUNICATION MODES AND ADDRESSES		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to establish communication modes and exchange contact information of the parties and the Engineer, unless otherwise stated in the Contract, in order to ensure smooth execution of the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded by a Public Entity.

ACTIONS REQUIRED

1. Project Director/Project Manager shall ensure that acceptable modes of communication are agreed with the Contractor, unless otherwise stated in the Contract.³⁴
2. Project Director/Project Manager shall ensure that the Contract is provided with following contact information of the Employer and the Engineer:
 - a. Postal address
 - b. Email address
 - c. Fax number
 - d. Contact telephone numbers of Employer's representative, the Engineer and Engineer's Representative/Assistants
3. The Project Secretary shall ensure that an email account with adequate storage capacity is opened and a fax machine is installed in the project office.
4. The Project Secretary shall ensure that the content of the inbox of email account is regularly backed up to create adequate space for incoming emails and fax machine is not run out of papers and ink/toner.
5. Project Director/Project Manager shall ensure that if change occurs to in any of the above said contact information, to inform the Contractor and the Engineer accordingly.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 1.3 [Communications]

ATTACHMENTS

Specimen Letters
SL/CA 15/ 01 – Letter to the Contract Informing Contact Details

³⁴Usual modes of communication of a contract with hard originals/copies include, delivery through postal services, courier services or by hand and communication through digital means include facsimile and emailing.

PROCEDURE NO.	CA 16		
PROCEDURE TITLE	AUTHORITY APPROVALS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out to obtain required prior approvals on schedule from statutory authorities and local bodies as may be deemed relevant such as Provincial Councils, RDA, UDA, CEA, Irrigation Department, Railway Department, BOI, Police and Local Authorities (Municipal/Urban Councils, Pradeshiya Sabas), for various construction activities to mitigate delays and cost over runs.

APPLICABILITY

This procedure is applicable to any contract to be awarded by a Public Entity.

ACTIONS REQUIRED

1. Project Director/Project Manager shall ensure that all prior approvals required from various authorities are obtained by the Contractor before commencement of relevant construction activities.
2. Project Director/Project Manager shall provide the Contractor with written recommendations supporting his application for approval from relevant authorities in time.
3. It should be noted that certain activities may require approval in stages as the work progress and therefore a mechanism shall be agreed with the relevant authority to obtain such approvals in stages according to the work program.
4. Project staff shall ensure that conditions imposed by authorities for their approvals are fulfilled by the Contractor prior to or during the execution of relevant activities, as the case may be.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 1.13 [Compliance with Laws]

ATTACHMENTS

Checklists
CL/CA 16/ 01 – Checklist for Obtaining Authority Approvals

PROCEDURE NO.	CA 17		
PROCEDURE TITLE	REVIEWING OF WORK PROGRAM		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out to review the Work Program [Master Program] which is to be submitted by the Contractor to the Engineer within 28 days after receiving the notice to commence, depicting the sequence and timing of each activity required to be carried out to complete the Works within the Time for Completion specified in the Contract and which is to be used as a base line/ bench mark for execution of works, is essential in monitoring the progress of works and ascertaining any delays to the Time for completion.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Project Director/Project Manager shall appoint a competent person to thoroughly review the Contractor's Work Program to ensure that it complies with the contractual requirements.
2. The Work Program shall be prepared using a project management software (preferably MS Projects software) acceptable to the Employer.
3. When reviewing the Work Program, following matters shall be considered:
 - a. Dedicated activities and milestones are allocated to all major work items and major events.
 - b. Time durations allocated are reasonable and realistic.
 - c. All activities and milestones are connected with appropriate logics representing desired relationship and sequence.
 - d. Resources and costs are allocated.
 - e. Appropriate calendars are defined and used to represent work week and non-working days.
 - f. Inappropriate constraints are introduced to restrict/manipulate the rearrangement of activities when the program is updated.
 - g. Contractual milestones and completion dates are met.
 - h. Interfaces with other contracts and events/activities are defined.
 - i. Critical Path is well defined.
 - j. Formatting of the output is acceptable
 - k. Work sequence and activities defined are accordance with the Contractor's method of working.
 - l. Method of working (Method Statement) submitted with the Work Program is complying with the contractual requirements and acceptable work practices.
4. If there is any non-compliance with above or contractual requirements, the Engineer or Project Director/Project Manager shall notify the Contractor to revise the Work Program and the accompanying report to the satisfaction of the Engineer.
5. If the Work Program is complying with the requirements stipulated in the Contract, Employer/Engineer may use that to monitor the progress of the Works, using the said program as the base line. However, it is not required for the Engineer or the Employer to concur with, accept or approve such program.

6. The Contractor shall be notified to revise the Work Program, if it is not complying with contractual targets when the program is updated using actual progress,.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 8.3 [Program]

ATTACHMENTS

Checklists

CL/CA17/01 – Checklist for reviewing Works Program

Specimen Letters

SL/CA/17/01 – Notification of Comments on Work Program

PROCEDURE NO.	CA 18		
PROCEDURE TITLE	REVIEWING OF CASH FLOW FORECAST		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required for review of the Contractor's cash flow forecasts (non-binding estimates of the payments for quarterly periods) for the execution of the Contract to assist the Employer to plan disbursement of funds in advance, especially when local currency components are involved.

APPLICABILITY

This procedure is applicable to any contract to be awarded when there is no schedule of payments included in the Contract.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that the Contractor submits his first cash flow forecasts (non-binding estimates) within 42 days after the Commencement Date.
2. The Project Director/Project Manager shall ensure that cash flow forecast submitted by the Contractor is in accordance with the Contractor's Work Program and Contract rates/prices.
3. The Project Director/Project Manager shall ensure that the Contractor submits his cash flow forecasts (non-binding estimates) quarterly thereafter.
4. If there is any major variation to the contract requiring major increase in funding the Project Director/Project Manager shall advise the Contractor to submit a revised cash flow forecast.
5. The Project Director/Project Manager shall ensure that the if there is any drastic change in quarterly cash flow forecasts submitted by the Contractor requiring higher amounts of funds than estimated earlier, he should promptly inform relevant authorities of such a change in required funding.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 14.4 [Schedule of Payments]

ATTACHMENTS

Specimen Letters

SL/CA 18/ 01 – Letter Requesting the Contractor to Submit Cash-Flow Forecasts

PROCEDURE NO.	CA 19		
PROCEDURE TITLE	DELEGATION OF AUTHORITY		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to delegate authority to project staff in order to ensure smooth execution of the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. If the Employer's representative is not named in the Contract, the head of the IA shall promptly nominate the Project Director/Project Manager as the Employer's representative.
2. The head of the IA shall delegate certain specific authorities to the Project Director/Project Manager while retaining important authorities for himself.
3. The Project Director/Project Manager shall ensure that certain authorities delegated to him are delegated to his subordinates as appropriate and notified to the Contractor accordingly.
4. When the Project Director/Project Manager is of the view such authority is no longer required, he may revoke such authority by notifying in writing to relevant staff with copies to all stakeholders

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 1.1.2.6 "Employer's Personnel"

ATTACHMENTS

Specimen Letters
SL/CA 19/ 01 – Letter Notifying the Appointment of the Employer's Representative

PROCEDURE NO.	CA 020		
PROCEDURE TITLE	Performance Security		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to format and acceptance of the Performance Security.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Usually terms of the contracts require a contractor to provide a Performance Security (usually within 28 days of the receipt of this Letter of Acceptance) for an amount specified within the Particular Conditions of the Contract and most of the contracts it was stated as 5% to 10% of the Accepted Contract Amount. However, during the bid evaluation, if the contractor's bid rates/amounts are found to be unreasonably high/low thus causing front end loading (rates quoted for activities in initial stage are higher while rates for activities in latter stage are lower than market rates), the employer may request for a Performance Security of higher value.
2. The Project Director or Project Manager shall ensure that the bid security is valid 14 days beyond the date by which the contractor is to submit Performance Security. Type of Performance Security required shall be an unconditional on demand bank guarantee from a reputed bank/agency acceptable to the Employer. Amount guaranteed under a Performance Security could be used by the employer to recover damages suffered by him due to breach of contract by the contractor or to recover cost incurred by the employer due to a contractor's default.
3. If the Contractor fails to provide a valid Performance Security within the time specified in the Contract, Project Director or Project Manager shall take action to demand the amount secured under the bid security, unless the Contractor extend the bid security for an adequate duration. The Contract could be terminated (in accordance with Sub-Clause 15.2 [Termination by Employer] of FIDIC/ICTAD Conditions of Contract), if the Contractor fails to comply with the Contract by not delivering the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance.
4. The Employer may withhold the handing over of possession of site to the contractor, until the contractor provides a valid Performance Security.
5. Upon receiving the Performance Security from the Contractor, the Chief Engineer (Contracts) and the Project Director shall thoroughly review the same to ensure that it has been written in the required format and the bank/agency which issued the Performance Security is acceptable to the Employer. If the bank which issued the Performance Security is not a bank operating in Sri Lanka, the Performance Security shall be confirmed by a bank operating in Sri Lanka, unless the bank which issued the Performance Security is a an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka.
6. The Project Director or Project Engineer shall write to the bank/agency which issued the Performance Security on behalf of the Contractor and/or the bank which confirmed the Performance Security issued by the Contractor's bank, to verify whether the

Performance Security submitted by the Contractor is genuine and enforceable in Sri Lanka.

7. Whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Engineer shall request the contractor to increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.
8. The Contractor may be required to increase the amount of the Performance Security by the full replacement cost of defective or damaged works when such works are to be removed from the Site for the purposes of repair.
9. The Performance Security provided by the Contractor shall be kept in safe custody and the Project Director/Project Manager shall remind the Contractor to extend the same, 28 days prior to its expiry date, if the Contractor has not become entitled to receive the Performance Certificate by that time.
10. The Performance Security provided by the Contractor shall remain valid and enforceable beyond the date on which the Performance Certificate is to be issued, unless otherwise specified in the Particular Conditions of the Contract and if the Contractor fails to extend the Performance Security by date 28 days prior to the expiry date of the same, when the Performance Certificate is yet to be issued, the Project Director/Project Manager shall make a written request to the bank which issued/confirmed the Performance Security, informing if the contractor fail to extend the said security by the expiry date, to consider it as a demand to the bank for payment of amount guaranteed under the Performance Security.
11. The Project Director/Project Manager shall make a demand to the bank which issued/confirmed the Performance Security to pay the guaranteed amount, if the Contract is breached by the Contractor.
12. If the contractor is issued with the Performance Certificate, the employer shall return the Performance Security to the contractor within 21 day. If the contract is terminated by the contractor in accordance with the terms of the contract or if the employer terminates the contract for his convenience, the employer shall promptly return the Performance Security to the contractor.

REFERENCES

Procurement Guidelines

Sub Section 5.3.11(b) (iv)

Sub Section 5.4.8

Procurement Guide

Sub Section 5.4.8 of Supplement – 18 which superseded original content

FIDIC Conditions of Contract MDB 2010

Sub-Clause 4.2 [Performance Security]

Sub-Clause 11.5 [Removal of Defective Work]

Sub-Clause 14.2 [Advance Payment]

Sub-Clause 14.6 [Issue of Interim Payment Certificates]

Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience]

Sub-Clause 16.4 [Payment on Termination]

ATTACHMENTS

Checklists

CL/CA 20/ 01 – Performance Security Acceptance Checklist

Specimen Letters

SL/CA 020/ 01 – Letter to Bank for verification of authenticity of the Performance Security

SL/CA 020/ 02 – Letter to Bank demanding payment of guaranteed amount if Performance Security is not extended

SL/CA 020/ 03 – Letter to Bank demanding payment of guaranteed amount if the contract is breached

SL/CA 020/ 03 – Letter to Bank for Authentication of Authorize Signature

Specimen Formats

SF/CA 020/ 01 – Performance Security

PROCEDURE NO.	CA 21		
PROCEDURE TITLE	REVIEW OF INSURANCE		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to review of insurance documents.³⁵

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that the Contractor submits evidence of insurance in the form of copies of the policies for the insurance and receipts for payments of insurance premiums
2. The Project Director/Project Manager shall review Insurance Policies submitted by the Contractor to find out whether they fulfil the insurance requirements stipulated in the Contract and/or agreed by the parties prior to the date of the Letter of Acceptance.
3. The Chief Engineer shall specifically ensure that deductibles and exclusions included within insurance policies are complying with the Contract and/or agreed by the parties prior to the date of the Letter of Acceptance.
4. The Chief Engineer shall specifically ensure that such insurance coverage is extended to cover the time stipulated in the Contract and evidences of such extensions are submitted for compliance.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 18.1 [General Requirements for Insurances]

Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]

Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property]

Sub-Clause 18.4 [Insurance for Contractor's Personnel]

ATTACHMENTS

Checklists

CL/CA 21/ 01 – Checklist for Review of Insurance

³⁵The Contractor is required to obtain insurance for:

- a) Insurance for Works and Contractor's Equipment
- b) Insurance against Injury to Persons and Damage to Property
- c) Insurance for Contractor's Personnel
- d) Professional indemnity Insurance for Design (only when designs are included within the scope).

PROCEDURE NO.	CA 22		
PROCEDURE TITLE	ESTABLISHMENT OF PAYMENT PROCEDURE		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to establishment of mechanisms required to make payments to the Contractor through disbursement from loans or grants following procedures stipulated under the terms of such loan/grant agreements.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall review loan/grant agreements to find out requirements stipulated in such financing agreements for disbursement of payments to the Contractor.
2. The Project Director/Project Manager shall request the Finance Section to establish such payment mechanisms to fulfil requirements of funding agencies.
3. The Project Director/Project Manager shall ensure that the Contractor has established his arrangement for receiving payments and information regarding such arrangements are shared with the Employer and its finance Section.

REFERENCES

Loan/grant agreements

ATTACHMENTS

Specimen Letters

SL/CA 22/ 01 – Letter to the Contractor Requesting Account Details

PROCEDURE NO.	CA 23		
PROCEDURE TITLE	ADVANCE PAYMENT GUARANTEE		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to acceptance of the Advance Payment Guarantee/Security in accordance with FIDIC and ICTAD Conditions of Contract prior to making the advance payments to the Contractor.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Project Director/Project Manager shall ensure that an acceptable Advance Payment Guarantee/Security is submitted by the Contractor prior to making the advance payment. The value of such Advance Payment Guarantee/Security shall be equal to the amount of Advance Payment, the Contractor is entitled in accordance with the Contract or the amount the Contractor intend to obtain as an Advance Payment from the Employer. The Advance Payment Guarantee/Security shall be issued by a reputed bank/entity acceptable to the Employer and it shall remain valid until the recovery of the full amount taken as the Advance Payment but amount guaranteed shall be progressively reduced by the amount repaid by the Contractor.
2. Upon receiving the Advance Payment Guarantee/Security from the Contractor, the Chief Engineer (Contracts) and the Project Director shall thoroughly review the same to ensure that it has been written in the required format and the bank/agency which issued the Advance Payment Guarantee/Security is acceptable to the Employer. If the bank which issued the Performance Security is not a bank operating in Sri Lanka, the Advance Payment Guarantee/Security shall be confirmed by a bank operating in Sri Lanka, unless the bank which issued the Advance Payment Guarantee/Security is a an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka.
3. The Project Director or Project Engineer shall write to the bank/agency which issued the Advance Payment Guarantee/Security on behalf of the Contractor and/or the bank which confirmed the Advance Payment Guarantee/Security issued by the Contractor's bank, to verify whether the Advance Payment Guarantee/Security submitted by the Contractor is genuine and enforceable in Sri Lanka.
4. The Advance Payment Guarantee/Security provided by the Contractor shall be kept in safe custody and the Project Director/Project Manager shall remind the Contractor to extend the same, 28 days prior to its expiry date, if the Advance Payment is not fully recovered
5. The Advance Payment Guarantee/Security provided by the Contractor shall remain valid until the recovery of the full amount taken as the Advance Payment and if the Contractor fails to extend the Advance Payment Guarantee/Security by date 28 days prior to the expiry date of the same, the Project Director/Project Manager shall make a written request to the bank which issued/confirmed the Advance Payment Guarantee/Security, informing if the contractor fail to extend the said security by the

expiry date, to consider it as a demand to the bank for payment of amount guaranteed under the Advance Payment Guarantee/Security.

6. Amount guaranteed under the Advance Payment Guarantee/Security shall be progressively reduced by the amount repaid by the Contractor.
7. The Project Director/Project Manager shall make a demand to the bank which issued/confirmed the Advance Payment Guarantee/Security to pay the guaranteed amount, if the Contract is unable to pay back the Advance Payment.

REFERENCES

Procurement Guide

Sub Section 5.4.4 of Supplement – 18 which superseded original content

FIDIC Conditions of Contract MDB 2010

Sub-Clause 14.2 [Advance Payment]

ATTACHMENTS

Checklists

CL/CA 23 01 – Advance Payment Guarantee Acceptance Checklist

Specimen Letters

SL/CA 23/ 01 – Letter to Bank for verification of authenticity of the Advance Payment Guarantee

SL/CA 23/ 02 – Letter to Bank demanding payment of guaranteed amount if Advance Payment Guarantee is not extended

SL/CA 23/ 03 – Letter to Bank demanding payment of guaranteed amount if the contractor has failed to fully repay the advance payment

PROCEDURE NO.	CA 24		
PROCEDURE TITLE	ADVANCE PAYMENT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to making the advance payments to the Contractor in accordance with the terms of the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Project Director/Project Manager shall review the Contract document to obtain following information:
 - a. Amount of Advance Payment entitled as a percentage of Accepted Contract Amount (or as a percentage of Accepted Contract Amount less Provisional Sums/Contingencies, if the Appendix to the Tender/Bid or Contract Data requires).
 - b. Number and timing of instalments.
 - c. Currency proportions.
 - d. Format of the Advance Payment Guarantee/Security specified in the Contract.
 - e. Conditions precedent to be met for releasing the Advance Payment.
2. Project Director/Project Manager shall ensure that following requirements are fulfilled by the Contractor prior to making the advance payment:
 - a. An acceptable Advance Payment Guarantee/Security is submitted.
 - b. An acceptable Performance Guarantee/Security is submitted.
 - c. A statement for the Advance Payment.
3. Project Director/Project Manager shall ensure that the Advance Payment is paid within the time frame specified in the Contract if the Contractor fulfils all the conditions precedent to the payment of the Advance Payment.
4. Advance Payment shall be progressively recovered in instalments from the Interim Payments as a percentage of certified amounts. Advance Payment shall be fully recovered prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 14.2 [Advance Payment]

ATTACHMENTS

Checklists
CL/CA 24/ 01 – Advance Payment Checklist

PROCEDURE NO.	CA 25		
PROCEDURE TITLE	ARRANGEMENT FOR ESTABLISHING DISPUTE BOARD/ DISPUTE ADJUDICATION BOARD		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to Establishment of a Dispute Board/Dispute Adjudication Board in accordance with FIDIC and ICTAD Conditions of Contract.³⁶

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract published by FIDIC or ICTAD when Dispute Board/Dispute Adjudication Board members are not named in the Contract.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall review the Contract to find out following information with regard to the establishment of Dispute Boards/Dispute Adjudication Boards (DB/DAB):
 - a. Whether DB/DAB members or prospective candidates are named in the Contract
 - b. Number of members to be appointed (either sole member or three members)
 - c. appointing entity or official named in the Contract when parties fail to appoint DB/DAB members
 - d. Time frame for appointing DB/DAB members
2. The Project Director/Project Manager shall short-list names of potential members for the Dispute Board/Dispute Adjudication Board from sources such as lists maintained by CIDA, ICLP and Institution of Engineers (IESL), considering following factors:
 - a. Integrity
 - b. Independency and impartiality
 - c. Qualifications
 - d. Professional experience in type of construction involved in the Works
 - e. Experience in adjudication
 - f. Sound knowledge in interpretation of contractual documents
 - g. Fluency in language of contract
 - h. Availability
 - i. Health conditions
3. The Project Director/Project Manager shall contact prospective candidates and check with them whether they are available and they have any conflict of interest. Also the Project Director/Project Manager shall obtain cost proposal for their remuneration and other costs.
4. The Project Director/Project Manager shall select three most suitable candidates based on above criteria and cost involved.

³⁶FIDIC Red Book and Pink Book require a standing Dispute Board/Dispute Adjudication Board while FIDIC Yellow Book requires an ad hoc Dispute Adjudication Board which shall be established only after the occurrence of a dispute.

5. The Project Director/Project Manager shall nominate to the Contractor names of three most suitable candidates selected by him to select one of them as the sole member or Employer's nominated member as the case may be.
6. When DB/DAB is comprised of three members, the members appointed by parties shall recommend a third member who shall act as the chairman of the DB/DAB.
7. In the event of disagreement to appoint a member for DB/DAB, either party can request the appointing entity or official named in the Contract to appoint DB/DAB members.
8. Upon appointment of DB/DAB members, parties shall make arrangement to sign tripartite Dispute Board/Dispute Adjudication Board agreement with each member of the DB/DAB.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 20.2 [Appointment of the Dispute Board]

ATTACHMENTS

Specimen Letters

SL/CA 25/ 01 – Letter Appointment of DB Members

PROCEDURE NO.	CA 26		
PROCEDURE TITLE	APPROVAL PROCEDURE FOR CONTRACTOR'S SITE ESTABLISHMENT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to granting clearance/approval for the Contractor's site establishment including his offices, workshops, access roads, accommodation, concrete batching plants and stock yards from the Employer/Engineer and the relevant authorities.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall write to the Contractor at the commencement of the Contract, reminding him of prior clearance/approvals required for certain components of the Contractor's site establishment.
2. In addition to the prior clearance of the Employer/Engineer, it is required to get approval of relevant authorities for certain components of the contractor's site establishment. (e.g. Planning approval from local authorities or UDA for buildings, environmental clearance from CEA for concrete batching plants and asphalt plants, RDA and traffic police clearance for road diversions and Labour Department approval for worker accommodation etc.)
3. When the Contractor make a request for such clearance, the Project Director/Project Manager shall ensure that prompt clearance is granted if the Contractor has fulfilled all his obligations or inform the contractor of any non-compliances/deficiencies which prevent granting of such clearances.
4. When the Contractor makes a request for approval to a relevant authority, the Project Director/Project Manager shall provide any assistance required by the Contractor to obtain such approval.
5. The Project Director/Project Manager shall ensure that the Contractor continue to comply with any conditions imposed by any authority, based on which approval is granted.

REFERENCES

None

ATTACHMENTS

Specimen Letters

SL/CA 26/ 01 – Letter for Approval of Site Installations

PROCEDURE NO.	CA 27		
PROCEDURE TITLE	APPROVAL OF SUBCONTRACTORS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to grant prior approval to engage subcontractors to execute part of the Works, unless such subcontractors are named in the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. When the Contractor make a request for prior consent of the Engineer to engage a subcontractor, the Engineer shall obtain the prior approval of the Employer to give such consent whenever it is required under the Sub-Clause 3.1 [Engineer's Duties and Authority].
2. When the Engineer forwards the information on the subcontractor provided by the Contractor, the Chief Engineer shall review such information including the draft subcontract agreement. The Chief Engineer shall check with the contract division of the organization and CIDA to ensure the subcontractor is not blacklisted and his past performances are satisfactory. Also the Chief engineer shall check whether the draft subcontract agreement includes provision for assignment of the subcontract to the Employer under the Sub-Clauses 4.5 [Assignment of Benefit of Subcontract] or in the event of termination under Sub-Clause 15.2 [Termination by Employer].
3. The Project Director/Project Manager shall ensure that prompt approval is granted to the Engineer to give his consent when the past records of the subcontractor are satisfactory and draft subcontract agreement includes provisions for assignment to the Employer.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 4.5 [Subcontractors]

Particular Conditions of Contract (if applicable)

Sub-Clause 3.1 [Engineer's Duties and Authority]

ATTACHMENTS

Specimen Letters

SL/CA 27/ 01 – Letter to grant Approval for Subcontractors

PROCEDURE NO.	CA 28		
PROCEDURE TITLE	APPOINTMENT OF NOMINATED SUBCONTRACTORS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to Nomination of subcontractors who are to be named in the Contract or to be employed by the main Contractor on the instruction of the Engineer.³⁷

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD under which nominated subcontractors have been named in the Contract or are to be appointed.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall review the Contract to find out whether any nominated Subcontractor has been named in the Contract and/or any provision is in the Contract for engaging nominated subcontractors.
2. The Project Director/Project Manager shall ensure that the Engineer instructs the Contractor to employ such nominated Subcontractors if there are provisions included in the Contract for nominated Subcontractors but they are not named in the Contract
3. The Project Director/Project Manager shall ensure that the Contractor engages such nominated Subcontractors who are named in the Contract or provisions for engaging them are included within the Contract, according to the Contractor's work schedule with adequate lead times.
4. When the Contractor notifies his reasonable objections to employ a nominated Subcontractor, the Project Director/Project Manager shall either make a fresh nomination or inform his agreement in writing to indemnify the Contractor against and from the consequences of such employment.

REFERENCES

FIDIC Conditions of Contract MDB 2010

³⁷Nominated subcontractors are required to be engaged, when certain specialist works are to be carried out within a Contract, under following circumstances:

- a) When an initial work activity such as piling works, which requires a longer lead time for procurement and mobilization, is to be carried out.
- b) When the Contract involves special equipment which require a long lead time for design, manufacture, testing and transport.
- c) When the Employer prefers to install same brand of equipment as already installed in his existing projects to avoid ordering and keeping stocks of spare parts for various types of equipment.
- d) When the Employer's design is to be carried out using design input parameters of specific brand of equipment to ensure proper integration.
- e) When the Employer has confidence on a particular brand/subcontractor upon repeated usage/engagement.
- f) To facilitate engagement of a single servicing and maintenance contractor for several installations, when using proprietary brands of equipment.
- g) When the Employer can get a bargain in price due to long standing business relationship he is having with a particular subcontractor.
- h) When the subcontract involves proprietary components which has been already in use at previously completed parts of the project.

Sub-Clause 5.1 [Definition of “nominated Subcontractor”]
Sub-Clause 5.2 [Objection to Nomination]
Sub-Clause 5.3 [Payments to nominated Subcontractors]
Sub-Clause 5.4 [Evidence of Payments]
Sub-Clause 13.5 [Provisional Sums] – Subparagraph (b)

ATTACHMENTS

Specimen Letters

SL/CA 28/ 01 – Appointment of Nominated Subcontractor

PROCEDURE NO.	CA 29		
PROCEDURE TITLE	REVIEW OF METHOD STATEMENT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to review of the Contractor's Method Statement.³⁸

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that the Contractor submits his Method Statement with the Work Program.
2. The Chief Engineer shall review the Method Statement and inform the Engineer of any shortcomings which are identified during such review.
3. The Chief Engineer shall check whether information provided by the Contractor in the Method Statement is realistic and complying with the Contract.
4. The Project Director/Project Manager shall ensure that the Engineer gives notice to the Contractor, within 21 days after receiving a program, informing him of shortcomings in the Method Statement.
5. The Project Director/Project Manager shall note that, in accordance with the Contract, the Employer or the Engineer is not required to approve or accept the Method Statement but only required to notify of any noncompliance with the Contract.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 8.3 [Program] – Sub paragraph (d)

Sub-Clause 8.6 [Rate of Progress]

ATTACHMENTS

Checklists

CL/CA 29/ 01 – Checklist for Method Statement

³⁸"Method Statement" should include:

- a) Detailed description of method of working for each work activity.
- b) Type and number of major equipment to be used.
- c) Sources of major materials required and information on their compliance with the Contract.
- d) Safety concerns to be addressed.
- e) Inspections and tests to be carried out including hold points for quality control.
- f) Any interfering with public and proposal for mitigation.
- g) Prior approvals and permissions required.
- h) Estimated productivity rates and time periods.

PROCEDURE NO.	CA 30		
PROCEDURE TITLE	APPROVAL FOR MATERIALS INCLUDING SAMPLES		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to acceptance of materials and samples of materials which the Contractor intend to use in the Works including product information, test certificates, factory/mill certificate and test reports.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that prior to commence works, the Contractor submits to the Engineer, samples of materials and detailed information on quality of materials such as catalogues and test certificates, he intend to use in the works.
2. The Chief Engineer shall inspect such samples and review all information and test certificates submitted by the Contractor and make arrangements to carry out testing of materials if required in accordance with the Contract.
3. The Chief Engineer, upon reviewing information provided by the Contractor and verifying the test reports of tests carried out on such materials, determine whether such samples of materials are complying with the Contract. If such materials are not complying, such materials shall be rejected and the Contractor shall be informed accordingly, informing him to submit samples of materials from a source complying with the Contract.
4. If such materials are complying with the Contract, approval shall be granted and the Contractor shall be informed accordingly. Samples of such approved materials shall be properly labelled and stored in a secured place to ensure such approved materials are actually used by the Contractor for permanent works, by comparing samples with materials actually used.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 7.2 [Samples]

Sub-Clause 7.2 [Inspections]

ATTACHMENTS

Specimen Letters

SL/CA 30/ 01 – Approval for Materials

PROCEDURE NO.	CA 31		
PROCEDURE TITLE	HANDING OVER OF EMPLOYER'S FREE ISSUE MATERIALS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to handing over of free-issue materials to the Contractor, in accordance with the terms of the Contract.³⁹

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD when the Employer is required to provide free-issue material, in accordance with the terms of the Contract.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall review the Contract to find out whether free-issue materials are provided in the Contract and particulars of such free-issue material such as quantity and quality required.
2. If free-issue materials are provided in the Contract, the Project Director/Project Manager shall obtain information on materials available with the Employer to verify whether sufficient quantity is available and quality of the materials comply with the requirements in the Contract.
3. If materials with required quality and quantity are available, the Project Director/Project Manager shall make arrangements to hand over such materials to the Contractor at a time and place agreed by the parties.
4. If there is a shortage in quantity or deficiency in quality of materials, upon the Contractor's notification, the Project Director/Project Manager shall make arrangements to rectify such shortage, defect or default.

REFERENCES

General Conditions of Contract

Sub-Clause 4.20 [Employer's Equipment and Free-Issue Materials]

ATTACHMENTS

Specimen Letters

SL/CA 31/ 01 – Handing Over of Free-Issue Materials

³⁹Free-issue materials are usually originated from materials taken over by the Employer upon termination of a Contract or due to omission of certain activities for which the Contractor had brought in such materials at the time of issuing the variation to omit certain works. The Employer is required to provide free-issue materials to the Contractor if such provisions are included in the Contract, at the time and place stipulated in the Contract.

PROCEDURE NO.	CA 32		
PROCEDURE TITLE	ACCEPTANCE OF DAILY REPORT FORMAT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to acceptance of the Daily Report Format under the FIDIC or ICTAD Conditions of Contract.⁴⁰

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall advise the Contractor to submit his proposal for Daily Report format.
2. Upon submission of the proposed Daily Report format by the Contractor, the Project Director/Project Manager shall review the same to ascertain whether it is acceptable for the purpose.
3. Upon review of the proposed Daily Report format by the Project Director/Project Manager, the Contractor shall be informed whether it is acceptable or need revision as per Engineer's comments.
4. When a revision to the Daily Report format is necessary, the Project Director/Project Manager shall review the revised Daily Report format to verify whether it is revised to accommodate Engineer's comments, upon submission of the same by the Contractor

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 32/ 01 – Daily Report Format

Specimen Letters

SL/CA 32/ 01 – Acceptance of Daily Report Format

⁴⁰Daily Reports can be used to record day to day activities carried out under a Contract, information included in such daily Reports would become useful as contemporary records when evaluating claims for time and cost.

PROCEDURE NO.	CA 33		
PROCEDURE TITLE	ACCEPTANCE OF CONTRACOR'S MONTHLY STATEMENT FORMAT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to acceptance and approval of format for Contractor's Monthly Statements which shall be considered as the applications for Interim Payment Certificates in accordance with FIDIC and ICTAD Conditions of Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall request the Contractor to submit his proposed format for Monthly Statements.
2. The Chief Engineer shall review the Contractor's proposed format for Monthly Statements and ensure that it includes following items with separate columns for different currencies in which the Contract Price is payable:
 - a. Estimated value of work done up to the relevant month, including variations.
 - b. Any adjustment due to change in costs or legislation.
 - c. Deduction of retention.
 - d. Any amount to be added as Advance Payment or deductions for recovering the same.
 - e. Any amounts to be added and deducted for Plant and Materials brought to site.
 - f. Any other additions or deductions which may have become due under the Contract or otherwise, including payments for claims, DB decisions and arbitral awards.
 - g. Deduction of amounts certified in all previous Payment Certificates.
3. If the Contractor's proposed format for Monthly Statements is acceptable, the Project Director/Project Manager shall inform the Contractor accordingly but if there are any comments/concerns regarding the suitability of the format, the Contractor shall be requested to revise the format to address such concerns.
4. Upon receiving the revised format, the Project Director/Project Manager shall inform the Contractor whether it is acceptable.
5. The Chief Engineer shall ensure that the Contractor adhere to the accepted format when he submits his monthly Statements.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 14.3 [Application for Interim Payment Certificates]

ATTACHMENTS

Specimen Letters

SL/CA 33/ 01 – Acceptance of Monthly Statement Format

PROCEDURE NO.	CA 34		
PROCEDURE TITLE	ACCEPTANCE OF MONTHLY PROGRESS REPORT FORMAT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to acceptance and approval of format for Contractor's Monthly Progress Report.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.⁴¹

ACTIONS REQUIRED

1. The Project Director/Project Manager shall request the Contractor to propose a format for the Monthly Progress Report taking in to account requirements stipulated under the terms of the Contract such as:
 - a. Information on progress of works including charts and tables depicting actual progress achieved.
 - b. Comparison of planned and actual progress
 - c. Photographs showing the status of progress on the Site
 - d. Records of Contractor's Personnel and Equipment availability and utilization
 - e. Information on quality assurance
 - f. Status of Contractor's claims and Employer's claims
 - g. Status of variations
 - h. Critical events affecting the completion of the works and remedial action proposed to mitigate delays
 - i. Updated work program
 - j. Safety statistics
2. The Project Director/Project Manager shall review the proposed format for the Monthly Progress Report and informed the Contractor whether it is acceptable or changes to the format are required.
3. The Contractor shall adopt the format for Monthly Progress Report accepted by the Engineer.
4. The Engineer shall ensure that the Contractor adhere to the accepted format when he submits his Monthly Progress Reports.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 4.21 [Progress Reports]

Sub-Clause 14.3 [Application for Interim Payment Certificates]

ATTACHMENTS

Specimen Letters

SL/CA 33/ 01 – Acceptance of Monthly Progress Report Format

⁴¹It is convenient for parties to agree to a format for such Monthly Progress Report and the Contractor shall be requested to submit such format for Engineer's concurrence.

PROCEDURE NO.	CA 35		
PROCEDURE TITLE	ISSUING OF DRAWINGS AND INSTRUCTIONS		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to issuing of additional and or modified drawings and instructions in accordance with the FIDIC and ICTAD Conditions of Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer and his assistants shall identify whether there is a necessity for additional or modified drawings and instructions due to inadequacies and errors in contract documents, unforeseen site conditions, change in the design or due to any other reason. The Engineer should take immediate action to rectify the situation by promptly issuing such drawings and instructions.
2. The Engineer shall ensure that such instructions will not substantially vary the scope of the Work or the original intent of the Contract. Site Instructions issued would typically explain ambiguities in the drawings or clarify technical requirements as necessary for the proper execution and completion of the Works and the remedying of any defects therein.
3. If notice is given to the Engineer by the Contractor, under the Contract, that the Contractor may suffer delay due to lack of drawings or instructions, the Engineer should take immediate action to rectify the situation.
4. The Engineer shall ensure that the issue of necessary additional or modified drawings, and instructions required by the Contractor, to comply with his program of work, are issued without delay.
5. If the Contractor incurs delay or additional costs as a result of failure by the Engineer to issue drawings and instructions within a reasonable time, the Engineer's Assistant should keep relevant records to determine any extension of time and/or additional costs to which the Contractor may be entitled under the Contract.
6. The Engineer's site staff should, whenever possible, avoid giving oral instructions to the Contractor. Should an oral instruction be unavoidable, written confirmation should be given as soon as possible thereafter. It is preferable that the Engineer's Assistants provide written confirmation of his oral instructions rather than giving the Contractor the opportunity to do this, since the Contractor may well alter the context of the oral instruction.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 3.3 [Instructions of the Engineer]

ATTACHMENTS

Specimen Letters

SL/CA 35/ 01 – Engineer's Instruction

Specimen Formats

SF/CA 35/ 01 – Format for Engineer's Instruction

PROCEDURE NO.	CA 36		
PROCEDURE TITLE	ACCEPTANCE OF FORMATS FOR RETURNS OF LABOUR/EQUIPMENT		
REVISION NO.	B	REVISION DATE	8 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to acceptance of formats for monthly returns of Contractor's Personnel and Equipment until all the works under the Contracts are completed.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Engineer shall advise the Contractor to submit his proposed format for monthly returns of labour and equipment.
2. Upon receiving the proposed format for monthly returns of labour and equipment from the Contractor, the Engineer shall review the same to ensure that the format is adequate for the purpose.
3. If the proposed format is acceptable the Engineer shall promptly give his approval for the same.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment]

ATTACHMENTS

Specimen Letters

SL/CA 36/ 01 – Acceptance of Formats for Contractor's Labour/Equipment Returns

PROCEDURE NO.	CA 37		
PROCEDURE TITLE	REVIEW OF QUALITY ASSURANCE SYSTEM AND QUALITY PLANS		
REVISION NO.	A	REVISION DATE	10 th November 2014

SCOPE

Scope of this procedure covers activities required to be carried out with regard to Establishment of and implementation of the Contractor's such quality assurance system and conducting of periodic quality audits on the Contractor by the Engineer.⁴²

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that his staff are conversant with quality assurance principles and competent in quality assurance functions such as quality auditing.
2. The Project Director/Project Manager shall request the Contractor to submit his quality assurance system documents and his Project Quality Plan for the Contract.
3. The Contractor's quality assurance system documents shall include a quality Guide, quality procedure Guide and work instructions.
4. The Contractor's Project Quality Plan should be prepared to cover requirements specific to the Contract.
5. The Contractor's quality assurance system and Project Quality Plan shall include provisions for the Contractor's staff to review and certify certain documents for compliance with contractual requirements, prior to requesting Engineer's approval for the same.
6. The Project Director/Project Manager shall arrange a review of the Contractor's quality assurance system documents to ensure that it is adequate to cover Contractor's all operations under the Contract. This review shall be carried out by a person who is competent to perform such reviews and having adequate experience.
7. Upon completion of the document review, the Project Director/Project Manager shall inform the Contractor of the acceptance of the Contractor's quality assurance system documents if there are no non-compliances found.
8. If there are any non-compliance found in the document, such non-compliances shall be addressed through either amending the Contractor's Project Quality Plan or revising the Contractor's quality assurance system documents.

⁴²FIDIC forms of Contracts (Red book, Pink book and Yellow book) require the Contractor to establish a quality assurance system

for his organization, which may be structured in accordance with a reputed international standard such as ISO9000 standard and which shall include a procedure to establish a documented Quality Plan to demonstrate compliance with the requirements of the Contract.

9. The Project Director/Project Manager shall arrange periodic audits of the Contractor's quality assurance system to verify whether the implementation of the said system is effective. Audits shall be carried out by a person who is competent to perform such quality audits and having adequate experience. Audits may be performed either by trained in-house auditors or auditors engaged through an external organization such as CIDA.
10. Upon completion of an audit, the Project Director/Project Manager shall inform the Contractor of the non-compliances found and issue a request to the Contractor to submit his proposal for remedying non-compliances within a time frame.
11. Upon receiving Contractor's proposal for remedying non-compliances, the Chief Engineer shall review the same for effectiveness and accept the proposal if satisfactory. If the Contractor's proposal for remedying non-compliances is not satisfactory, the Chief Engineer shall request the Contractor to submit a revised proposal.
12. Upon implementation of a Contractor's proposal for remedying non-compliance, the Chief Engineer shall review the effectiveness of implementation and if satisfactory, close out the non-compliance by informing the Contractor accordingly.
13. If the remedying of non-compliance is not satisfactory, the Contractor shall be advised to repeat the process until the corrective measures are satisfactory.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 4.9 [Quality Assurance]

ATTACHMENTS

Specimen Formats

SF/CA 37/ 01 – Non Conformance Notice

SF/CA 37/ 02 – Corrective Action Request

Specimen Letters

SL/CA 37/ 01 – Review of the Contractor's Quality Assurance System

SL/CA 37/ 02 – Comments on the Contractor's Quality Assurance System

Part Two

CONTRCAT EXECUTING STAGE

CONTENT OF PROCEDURES - EXECUTION STAGE

Procedure No.	Procedure	Revision Status	Date
CA38	Conducting of Monthly Progress Meetings	B	9 Sep 2015
CA39	Preparation of Monthly Progress Reports	B	9 Sep 2015
CA40	Preparation of Quarterly Progress Reports	B	9 Sep 2015
CA41	Preparation of Annual Progress Reports	B	9 Sep 2015
CA42	Steering Committee Meetings	B	9 Sep 2015
CA43	Monitoring of Progress	B	9 Sep 2015
CA44	Monitoring of Critical Issues	B	9 Sep 2015
CA45	Updating of Work Program	B	9 Sep 2015
CA46	Updating of Contract Amount and Forecast Cost	B	9 Sep 2015
CA47	Use of Provisional Sums	B	9 Sep 2015
CA48	Managing Design Changes Including Control of Drawings	B	9 Sep 2015
CA49	Managing Variations	B	9 Sep 2015
CA50	Approval for New Rates	B	9 Sep 2015
CA51	Managing Claims	B	9 Sep 2015
CA52	Managing Extensions of Time	B	9 Sep 2015
CA53	Employer's Claims	B	9 Sep 2015
CA54	Suspensions	B	9 Sep 2015
CA55	Certification of Interim and Final Payment Certificates	A	24 Sep 2015
CA55A	Determination of Estimated Contract Value	A	4 Oct 2015
CA56	Engineer's Determinations	A	24 Sep 2015
CA57	Deduction and Release of Retention Money	A	25 Sep 2015
CA58	Day works	A	25 Sep 2015

PROCEDURES CA 38 TO CA 58

PROCEDURE NO.	CA 38		
PROCEDURE TITLE	CONDUCTING OF MONTHLY PROGRESS MEETINGS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to conducting Monthly Progress Meetings, which are usually chaired by the Engineer or his Assistant with the participation of the Project Director/Project Manager, Contractor's representative and Engineer's senior staff.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer or his Assistant shall arrange the Monthly Progress Meetings in consultation with the Project Director/Project Manager and the Contractor's Representative.
2. The Engineer or his Assistant shall prepare the agenda for the meeting and circulate that to all participants with the invitation for the meeting well in advance.
3. The Engineer or his Assistant shall chair Monthly Progress Meetings and assign a competent person to record and maintain the minutes.
4. During a Monthly Progress Meeting following matters should be discussed:
 - a. status of implementation of previously agreed actions;
 - b. review of progress of the works;
 - c. adequacy of Contractor's resources'
 - d. quality of works and cost control;
 - e. any obstructions or impediments to contractor's progress;
 - f. Contractor's planned activities for following month;
 - g. contractual matters; and
 - h. any other problem encountered by the Contractor
5. Minutes of the Monthly Progress Meetings shall be prepared and circulated to all participants upon review by the Project Director/Project Manager.

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 38/ 01 – Format for Monthly Progress Review Meeting Minutes

PROCEDURE NO.	CA 39		
PROCEDURE TITLE	PREPARATION OF MONTHLY PROGRESS REPORTS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to preparation of Monthly Progress Reports. The Project Director/ Project Manager and the Engineer are required to submit Monthly Progress Reports regularly to the line ministry, ERD, Funding Agency, CIDA and the management of the implementation agency.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Project Director/ Project Manager and the Engineer shall prepare Monthly Progress Reports to reflect the status of the Contract at the end of each quarter.
2. Monthly Progress Reports should include physical and financial progress of the Works, financial status, quality issues, resources utilization, variations and claims, dispute resolution and issues affecting the performance of the Contract.
3. Monthly Progress Reports should be submitted to the secretary of the line ministry, ERD, Funding Agency, CIDA and the management of the implementation agency on or before 15th of the following month.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 4.21 [Progress Reports]

ATTACHMENTS

Specimen Formats
SF/CA 39/ 01 – Format for Monthly Progress Report

PROCEDURE NO.	CA 40		
PROCEDURE TITLE	PREPARATION OF QUARTERLY PROGRESS REPORTS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to preparation of Quarterly Progress Reports which are required to the line ministry, ERD, Funding Agency, CIDA and the management of the implementation agency.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Project Director/ Project Manager and the Engineer shall prepare Quarterly Progress Reports to reflect the status of the Contract at the end of each quarter.
2. Quarterly Progress Reports should include physical and financial progress of the Works, financial status, status of implementation of loan covenants and issues affecting the performance of the Contract.
3. Quarterly Progress Reports should be submitted to the secretary of the line ministry, ERD, Funding Agency, CIDA and the management of the implementation agency on or before 15th of the first month in the following quarter.

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 40/ 01 – Format for Quarterly Progress Report

PROCEDURE NO.	CA 41		
PROCEDURE TITLE	PREPARATION OF ANNUAL PROGRESS REPORTS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to preparation of Annual Progress Reports which are required to be submitted to the line ministry, ERD, Funding Agency and the management of the implementation agency.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Project Director/ Project Manager and the Engineer shall prepare Annual Progress Reports to reflect the status of the Contract at the end of each year.
2. Annual Progress Reports should include physical and financial progress of the Works, financial requirements for the following year and issues affecting the performance of the Contract.
3. Annual Progress Reports should be submitted to the secretary of the line ministry, ERD, Funding Agency and the management of the implementation agency on or before end of the month January in the following year.

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 41/ 01 – Format for Annual Progress Report

PROCEDURE NO.	CA 42		
PROCEDURE TITLE	STEERING COMMITTEE MEETINGS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to conducting of Steering Committee Meetings

Steering Committee Meetings are conducted with the participation of all major stakeholders of the project with the Secretary to the line ministry or his representative chairing the meeting. Steering Committee is the apex body headed by the Secretary to the line ministry and has authority to take decisions regarding the matters related to execution of the project (and all contracts under the project).

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall arrange the Steering Committee Meetings on the advice of the Secretary to the line ministry.
2. The Project Director/Project Manager shall prepare the agenda for the meeting and circulate that to all participants with the invitation for the meeting at least one week in advance.
3. The Secretary to the line ministry shall chair the Steering Committee Meetings and all major stakeholders shall be invited to participate.
4. The Project Director/Project Manager shall assign a competent person to record and maintain the minutes of the Steering Committee meetings. The meeting minutes should state clearly the matters referred for deliberation, issues referred for discussion and agreed upon and record any dissent
5. The Project Director/ Project Manager and the Engineer shall present information on status of progress, status of financing, critical issues affecting the progress, any obstructions or impediments to contractor's progress and any environmental or social issues affecting the project.
6. Steering Committee shall authorize actions required by various entities/persons and such actions shall be recorded as resolutions assigning a serial number for each resolution.
7. Status of each unresolved resolution and follow up action necessary for the same shall be discussed during every subsequent Steering Committee Meeting until issues under such resolutions are finally resolved.
8. Minutes of Steering Committee Meetings shall be prepared and circulated to all participants and stakeholders upon vetted/reviewed by the Project Director and the Chairman of the meeting.

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 42/ 01 – Format for Agenda for Steering Committee Meeting

SF/CA 42/ 02– Format for Attendance Record for Steering Committee Meeting

SF/CA 42/ 03 – Format for Minutes of the Steering Committee Meeting

PROCEDURE NO.	CA 43		
PROCEDURE TITLE	MONITORING OF PROGRESS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried to monitor and document the progress of works.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. At the start of the project, the Engineer shall review the original Contractual Program submitted by the Contractor. This program shall be sufficiently detailed to identify individual activities, milestones and relationship between them. The program also shall indicate sequence of activities and milestones and the critical path(s) and it shall comply with the contractual requirements.
2. The Engineer shall use the same project management software or a compatible software as the Contractor for monitoring of progress.
3. The Contractual Program shall be fixed as a "baseline" program and actual progress shall be periodically updated to give a comparison between planned and actual progress.
4. As work progresses, actual progress data will be input on a regular basis for comparison with that planned in the original Contractual Program. The progress data will be entered at least monthly but shorter periods may be preferable if the activities are of short duration and critical.
5. As they occur, impacts of delays shall be identified and analyzed to determine whether the contractor is entitled for an extension for such delays.
6. Engineer shall maintain a special set of drawings and/or schedules on which progress, date of placement, erection or installation, date of inspection and of acceptance of various features of the work are to be recorded.
7. Drawings and/or charts will be prepared for each major item of work such as, but not limited to, the following examples:
 - excavation
 - earthworks
 - road pavements
 - bridge substructures
 - bridge superstructures
 - drainages
 - drilling
 - concrete works
 - structural steelwork erection
 - pipe work
 - architectural works

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 43/ 01 – Format for Recording Progress for Monitoring

PROCEDURE NO.	CA 44		
PROCEDURE TITLE	MONITORING OF CRITICAL ISSUES		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out for the management of critical issues which may impede/interrupt the progress of the works and could result in additional costs and/or prolongation of the contract period. Variations to the Contract may be required to resolve certain critical issues while some other critical issues may be resolved through proper coordination with other stakeholders.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. When a critical issue becomes known, the Engineer will enter the details in the Critical Issues Register.
2. All relevant information and documentation relevant to each critical issue shall be compiled and shared among the staff responsible for resolving the critical issue.
3. Circumstances leading to the critical issues shall be analyzed to determine the root cause and decide on actions to be taken to resolve the same.
4. Each critical issue should be followed up until it is resolved by taking appropriate actions and it shall be closed out if it is resolved successfully. Critical Issues Register shall be updated accordingly.
5. All unresolved critical issues shall be included in progress reports and shall be reported to Steering Committee for resolution. Such unresolved critical issues shall initiate steering committee resolutions and shall be followed up during each Steering Committee meeting until its resolution.

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 44/ 01 – Format for Register of Critical Issues

PROCEDURE NO.	CA 45		
PROCEDURE TITLE	UPDATING OF WORK PROGRAM		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to updating of Work Program.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD which require the Contractor to submit a comparisons of actual and planned progress of the Works and details of any events or circumstances which may delay the completion in accordance with the Contract, in his Monthly Progress Reports.

ACTIONS REQUIRED

1. The Engineer shall ensure that the Contractor submits with his Monthly Progress Report, an updated work program in tracking Gantt chart with the original program fixed as a base line and all progress data which he input to update the Program.
2. The Engineer shall assign a competent person to review the program for accuracy of data input and changes in critical path.
3. Impact of delay events for which the Employer is responsible and the Contractor has notified within the specified time limit, shall be applied and their effect on completion date shall be noted

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 4.21 [Progress Reports]

ATTACHMENTS

Format for updated work program will be included in the Project Management Volume of the GPMCM Guide

PROCEDURE NO.	CA 46		
PROCEDURE TITLE	UPDATING OF CONTRACT AMOUNT AND FORECAST COST		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to updating Contract Amount and Forecast cost.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer shall update the Contract Amount⁴³ and the Forecast Cost⁴⁴ periodically (preferably at quarterly intervals) and inform.
2. The Project Director/Project Manager and the Engineer shall include such information in the monthly and quarterly progress reports for higher managements of Executing and Implementation Agencies to become aware of the financial status of the project and take action accordingly.

REFERENCES

None

ATTACHMENTS

Specimen Formats

SF/CA 46/ 01 – Format for Updating of Contract Amount and Forecast Cost

⁴³The **Contract Amount** is an estimated cost which is an expected value of a contract at a given time, calculated by making adjustments to the Accepted Contract Amount based on latest information available. Such new information may be:

- (a) value of works actually executed and value of works to be executed calculated based on latest information available (including provision sum items);
- (b) value of services, Plants and materials actually supplied and value of services, Plants and materials to be supplied calculated based on latest information available (including provision sum items);
- (c) variations for which valuation agreed or determined and variations for which the Engineer agree in principle;
- (d) claims agree or determined and claims for which the Engineer agree in principle;
- (e) adjustments made (for changes in costs, changes in legislation and work carried out under provisional sums) in accordance with the Contract;
- (f) Forecast for adjustments to be made for changes in costs based on current cost indices; and
- (g) Any other cost actually incurred or to be incurred based on latest information available.

The Contract Amount is a conservative estimate of the expected value of a contract.

⁴⁴The **Forecast Cost** of a contract is an estimated cost which is an expected value of a contract at a given time, calculated by making adjustments to the Accepted Contract Amount based on latest information available and amounts claimed/demanded for variations and claims by the Contractor. The difference between the Contract Amount and the Forecast Cost is the value of undetermined variations and claims. While for the Contract Amount, only variations and claims for which the Engineer agree in principle, are taken in to account, for the Forecast Cost, claimed/demanded amounts of claims and variations are taken in to account. The Forecast Cost is an upper bound estimate of the expected value of a contract while the Contract Amount is a lower bound estimate.

PROCEDURE NO.	CA 47		
PROCEDURE TITLE	USE OF PROVISIONAL SUMS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to use of Provisional Sums which are specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager and the Engineer shall review the Contract to identify provisional sums⁴⁵ included within the BOQ/Schedule. Valuation of provisional sums shall be based on actual amounts expended by the Contractor, which should be substantiated by submission of quotations, invoices, vouchers and accounts or receipts.
2. If there is a necessity to execute works under a provisional sum, the Engineer shall instruct the Contractor to execute such works: and value under the variation procedure, when the works, supplies or services are to be carried out directly by the Contractor; or value based on the actual amounts paid (or due to be paid) by the Contractor to a nominated sub contractor or others with an overhead and profit component, when the Contractor assigns such works to a nominated sub contractor or others.
3. The Engineer shall instruct the Contractor to submit quotations, invoices, vouchers and accounts or receipts, to substantiate his expenses.

⁴⁵**Provisional Sum** is usually provided for a specific work, supply or Service and therefore it should only be use for making payments for specific work, supply or Service to which it relates. Provisional Sums are specifically included under separate items in a BOQ/Schedule, when it is impossible to provide BOQ/Schedule items to represent certain works, supplies or services due to uncertainties involved with regard to extent, specifications and quality of such works, supplies or Services. (e.g. Provisional Sum for diversion/relocation of electrical services, Provisional Sum for environmental protection and Provisional Sum for site investigation). However it is prudent to avoid provision of provisional sums in a BOQ/Schedule whenever it is possible, as valuation of provisional sums may lead to disputes.

A Provisional Sum for Adjustments for Changes in Cost (Price escalation) is usually provided in a BOQ/Schedule in order to allocate an amount for the same in the Accepted Contract Amount while another Provisional Sum for Contingencies is provided in a BOQ/Schedule to make allocations in the Accepted Contract Amount for making payments for contingencies such as variations, claims and DB/DAB costs.

A Provisional Sum should be only be used at the discretion of the Engineer, in accordance with his instructions, in whole, in part or not at all.

4. The Engineer shall value the works carried out under each provisional sum either following variation procedure or based on actual cost expended together with an overhead and profit component as the case may be and notify the parties accordingly. It is recommended that different percentages should be provided as overheads and profit percentages for provisional sums (at the tender stage), depending on the extent of involvement of the Contractor in the execution of works under such provisional sums. (e.g. for provisional sums for utility relocation/diversion where the Contractor's involvement is minimal, a lesser percentage such as 5%-10%; for provisional sum for environmental protection where the Contractor's involvement is considerable 15%)
5. The Engineer shall adjust the Contract Price upon valuation of works carried out under each provisional sum

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 13.5 [Provisional Sums]

ATTACHMENTS

Specimen Letters

SL/CA 47/ 01 – Request for Evidence to Substantiate Provisional Sum Payments

PROCEDURE NO.	CA 48		
PROCEDURE TITLE	MANAGING DESIGN CHANGES INCLUDING CONTROL OF DRAWINGS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to management of design changes which are often subject to change during the execution of the contract due to various reasons, irrespective of which party is responsible for such designs.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer shall review the original design in the light of new information available including survey data, geotechnical information and hydrological information.
2. The Engineer, upon receiving new information during the execution of the contract, shall indentify whether there is a necessity for changes/modifications to the original designs. Such changes may be necessary:
 - a. When it is clear that actual site conditions are different from assumed site conditions, based on which original designs were carried out.
 - b. When there are problems with regard to suitability, buildability and economy of the original design.
 - c. When there are obvious errors in the original design with regard to design inputs, design method, design calculations/analysis and design inputs (including drawings).
 - d. When there is a proposal on Value Engineering from the Contractor.
 - e. When the Employer wants to change the concept of the design and the scope of the works.
3. The Engineer, if there is a necessity for design changes, assign that responsibility to a competent person who is conversant with such type of design works involved, upon informing the Employer. If any design changes are necessary due to a Contractor's proposal for Value Engineering, the Contractor is responsible for such design and the Engineer shall review the same for compliance with contractual requirements.
4. When the Employer obtain a assessable financial benefit from a Contractor's Value Engineering proposal, considering the reduction in contract value attributable to such proposal and the reduction (if any) in the value to the Employer of the varied works, due to reductions in quality, anticipated life or operational efficiencies, the Contractor shall be paid a fee amounting to half of such financial benefit upon the Engineer agree or determine such amount.
5. Upon completion of the design changes, all relevant design inputs, design analysis/calculations and design drawings shall be submitted to competent persons for verification and validation of the design.

6. Upon verification and validation of the design change, the Engineer shall review and approve the same.
7. If the design change is affecting only a part of a drawing, that part should be highlighted using a cloud for ease of identification, revision notes should be included to indicate description of the design change and revision status of the drawing should be indicated by adding a capital letter to end of the drawing number (For first revision letter A).
8. Before issuing the drawing to the Contractor, drawing shall be signed by persons who designed, checked and approved and drawing register shall be updated to include the revised drawing. Engineer's Assistant shall take action to stamp all obsolete copies of the previous version of the drawing with "OBSOLETE" and remove them from usage to avoid confusion. All copies of obsolete drawings shall be destroyed except one copy which should be kept for historical reference.
9. The revised drawing which includes the design change shall be issued to the Contractor.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 3.3 [Instructions of the Engineer]

Sub-Clause 13.2 [Value Engineering]

ATTACHMENTS

Specimen Formats

SF/CA 48/ 01 – Format for Drawing Register

PROCEDURE NO.	CA 49		
PROCEDURE TITLE	MANAGING VARIATIONS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to instructing, processing and evaluation of variations.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer may initiate a variation either through an instruction or a request for the Contractor to submit a proposal. The Engineer shall initiate a variation upon identifying himself for necessity for the same. The Engineer may initiate a variation on a request for the same by the Employer or the Contractor, upon considering whether such requests fall within the scope of the Permanent Works defined within the Contract and whether such request is for change which constitutes a variation as defined in the Contract.
2. Variations shall not be issued for any increase or decrease in the quantify of any work where such increase or decrease is not the result of an instruction given to change the form, levels, positions and/or dimensions, but is the result of the quantities exceeding or being less than those stated in the Schedules/Bill of Quantities (as quantities stated in the BOQ/Schedules are not actual but estimated quantities).
3. Engineer shall instruct variations whenever following situations arise:
 - a. For change in the form (levels, positions and/or dimensions), quantity, quality or any other characteristics of the Works
 - b. For any additional work, Plant, Materials or services necessary for the Works
 - c. For changes to the sequence or timing of the execution of the Works
 - d. For omission of any work unless it is to be carried out by others
4. The Engineer shall provide a unique serial number for each variation instructed, preferably in the format XXXX/VO NN (XXXX denotes an abbreviation for the contract e.g. DZWS/VO 12) and that serial number shall be quoted in subsequent exchange of correspondences relevant to that variation.
5. The Engineer shall carry out valuation of variations by first initiating consultation with both parties to reach an agreement on the valuation, failing which the Engineer shall determine the valuation.
6. If there are rates or prices specified in the Contract for items involved in the instructed variation, those rates or prices shall be used for valuation of the variation, otherwise rates or prices shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of difference between both items in character and conditions under which such works are to be executed.
7. If there are no relevant rates or prices specified in the Contract from which new rates or prices could be derived by applying reasonable adjustments, new rates or prices shall be derived from the reasonable Cost of executing the work with a reasonable profit.

8. The Engineer shall use a provisional rate or price for making payments for variations in Interim Payment Certificates until an appropriate rate or price is agreed or determined.
9. The Engineer shall not instruct variations after issuing of the Taking Over Certificate.
10. Engineer's authority to order variations may be restricted through provisions in the Contract which require the Engineer to obtain the specific approval of the Employer prior to instruct a Variation, or may allow the Engineer to issue Variations within delegated financial limits except in an emergency situation affecting the safety of life or of the Works or of adjoining property.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 12.3 [Evaluation]

Sub-Clause 13.1 [Right to Vary]

Sub-Clause 13.3 [Variation Procedure]

ATTACHMENTS

Check List

CL/CA 49/ 01 – Variation Check List

Specimen Formats

SF/CA 49/ 01 – Format for Variation Order Register

SF/CA 49/ 02 – Format for Variation Order

PROCEDURE NO.	CA 50		
PROCEDURE TITLE	APPROVAL FOR NEW RATES		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to deriving of new rates when it is required under the terms of the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer shall identify whether there is a necessity for derivation of new rates with regard to evaluation of variations under Variation Procedure, Provisional Sums or/and measured quantity of any item of work stated in the Bill of Quantities/the Schedule being changed by more than the percentage stipulated in the Contract, from the quantity of this item in the Bill of Quantities/the Schedule.
2. If there is a necessity for derivation of new rates, the Engineer shall consult both parties to reach an agreement on such new rates, failing which he shall determine reasonable and appropriate rates based on the provisions in the Contract.
3. The Engineer shall derive new rates from any relevant rates in the Contract, with reasonable adjustments to take account of the differences in the character and the conditions under which the item of work is to be executed from that of the item of work for relevant rates.
4. When there are no relevant rates from which new rates could be derived, the Engineer shall derive new rates from the expenditure reasonably incurred (or to be incurred) by the Contractor with overheads and profit⁴⁶.
5. Whenever the measured quantity⁴⁷ of any item of work stated in the Bill of Quantities/the Schedule is changed by more than the percentage stipulated in the Contract, from the quantity of this item in the Bill of Quantities/the Schedule, new rates derived by the Engineer shall only be applicable to excess quantity of the item over and above the BOQ quantity plus the percentage stipulated in the Contract. Rate applicable for the quantity below the BOQ quantity plus the percentage stipulated in the Contract, is the rate specified in the BOQ/Schedule.
6. Alternatively, it is possible to derive a uniform rate for the entire quantity of the item by combining costs of both quantities and deriving a rate by dividing that amount by total quantity involved. The cost of executing the works up to the BOQ quantity plus the percentage stipulated in the Contract shall be based on the rate specified in the BOQ/Schedule.

⁴⁶FIDIC Pink Book requires profit to be 5%.

⁴⁷If the measured quantity of an item of work stated in the Bill of Quantities/the Schedule is changed by more than the percentage stipulated in the Contract (25% for pink book but 10% for Red book) from the quantity of this item in the Bill of Quantities/the Schedule; and this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount; and this change in quantity directly changes the Cost per unit quantity of this item by more than 1% and this item of work is not specified in the Contract as a "fixed rate item".

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 12.3 [Evaluation]

Sub-Clause 13.3 [Variation Procedure]

Sub-Clause 13.5 [Provisional Sums]

ATTACHMENTS

Specimen Letters

SL/CA 50/ 01 – Letter to Inform New Rates Determine by the Engineer

PROCEDURE NO.	CA 51		
PROCEDURE TITLE	MANAGING CLAIMS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to management of Contractor's claims in connection with the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

OVERVIEW OF GENERAL PRINCIPLES

A Contractor's Claim is defined as a legitimate demand/request by a Contractor for additional money or/and time which should be based on an entitlement under the Contract or Law governing the Contract.

Contractor's Claims may arise due to loss suffered, additional costs incurred and/or delay suffered by a contractor, caused by:

- a. breach of the terms of the contract due to an action or inaction of the Employer or the Engineer
- b. Changes to the Contract, instructed
- c. Unforeseen events for which neither party is responsible
- d. action or inaction of a third party

A Contractor should be paid for loss suffered and/or additional costs incurred due events for which he is not responsible, with additional amounts as compensation which will put him in the position he would have been in, if he had not incurred such additional costs or suffered losses due to events for which the claim is made.

All major forms of contracts, including FIDIC Red book and Pink book, provide for a Contractor to claim additional payments and/or extensions of the Time for Completion which he entitle under the terms of the Contract or otherwise under the laws, in connection with the Contract. FIDIC Red book and Pink book require a Contractor to give notice to the Engineer, describing the event or circumstance giving rise to the claim within 28 days after the Contractor became aware, or should have become aware, of the event or circumstance, to become entitle for such claim. Since above notification requirement is mandatory, a Contractor shall not be entitled for any additional payments and/or extensions of the Time for Completion, if he fails to give a valid notification within the stipulated time.

Upon submitting a valid notification to the Engineer, the Contractor is required to submit any other notices required under the Contract and supporting particulars for the claim, which are relevant to such event or circumstance

The Contractor is required to keep contemporary records which may be necessary to substantiate such claims or as requested by the Engineer, allow the Engineer to inspect such records and submit copies of such records if requested by the Engineer. The Contractor is also required to submit to the Engineer within the time stipulated in the Contract or otherwise agreed with the Engineer, a fully detailed claim which includes full supporting particulars of the basis of the claim and length of the extension of time and/or amount of additional payment claimed.

Usually under the provisions in the Contract, a Contractor is entitled for costs which has been defined under the FIDIC conditions as “all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit”. However most of the Sub- Clauses in FIDIC form of contracts, allow payment of profit on such costs. Following table (Table CA 51-01), illustrate Contractor’s entitlement for such costs and profits under various Sub-Clauses:

Table CA 51-01 - Contractor’s Entitlement for Time Costs and Profits under the Contract

Sub-Clause in Conditions of Contract (FIDIC –MDB)		Contractor’s Entitlement		
No.	Title	Time	Cost	Profit
1.9	Delayed Drawings or Instructions	Y	Y	Y
2.1	Right of Access to the Site	Y	Y	Y
4.7	Setting Out	Y	Y	Y
4.12	Unforeseeable Physical Conditions	Y	Y	N
4.24	Fossils	Y	Y	N
7.4	Testing	Y	Y	Y
8.4	Extension of Time for Completion	Y	N	N
8.5	Delays Caused by Authorities	Y	N	N
8.9	Consequences of Suspension	Y	Y	N
10.2	Taking Over of Parts of the Works	N	Y	Y
10.3	Interference with Tests on Completion	Y	Y	Y
11.8	Contractor to Search	N	Y	Y
12.4	Omissions	N	Y	N
13.7	Adjustments for Changes in Legislation	Y	Y	N
14.8	Delayed Payments	N	Y	N
16.1	Contractor’s Entitlement to Suspend Work	Y	Y	Y
16.4	Payment on Termination	N	Y	N
17.1	Indemnities	N	Y	N
17.4	Consequences of Employer’s Risks	Y	Y	Y/N
19.4	Consequences of Force Majeure	Y	Y	N
19.6	Optional Termination, Payment and Release	N	Y	N
20.1	Contractor’s Claims	Y/N	Y/N	Y/N

Unless his authority is restricted under the terms of the Contract, the Engineer is required to give his response on the principles of the claim and his approval, or disapproval with detailed comments, within the time stipulated in the Contract or otherwise agreed with the Contractor. The Engineer is also required to agree to or determine any extension of the Time for Completion and/or any additional payment to which the Contractor is entitled under the Contract, within the time stipulated in the Contract. When the Engineer's authority is restricted under the terms of the Contract, the Engineer is required to obtain specific approval of the Employer prior to giving any response, approval or determination with regard to a claim.

However, when the event or circumstance giving rise to a claim has a continuing effect, the Contractor's fully detailed claim shall be considered as interim with the Contractor submitting such further interim claims at monthly intervals as required by the Engineer. The Contractor's final claim must be submitted within 28 days or such other period agreed with the Engineer, of the "continuing effects" coming to an end.

While a Contractor's failure to comply with notification requirement for a claim will result in the Contractor's entitlement being invalidated, his failure to comply with other requirements stipulated in the Contract with regard to claims may result in the Contractor's entitlement being restricted.

ACTIONS REQUIRED

1. The Project Director/Project Manager and the Engineer shall take every endeavour to avoid claims (or at least minimizing them) during the execution of a contract by eliminating potential causes for claims such as:
 - a. Delays in handing over of site possession
 - b. Failure to clear obstructions or encumbrances
 - c. Delays in providing instructions or drawings
 - d. Delays in making payments
 - e. Suspensions which are due to bad management
 - f. Unnecessary interference with Tests
 - g. Not providing adequate assistance to get approval of authorities
 - h. Unnecessary use or taking over of parts of the works
 - i. Delays in evaluation of variations, new rates or claims (for additional amounts and time)
 - j. Unreasonable rejection of variations, new rates or claims
 - k. Unreasonable deduction of liquidated damages
 - l. Induced accelerations due to delays in granting Extensions of Time
 - m. Other breaches of terms of the Contract
2. The Project Director/Project Manager and the Engineer shall form a strong claim management team by:
 - a. Further training of competent staff available within the project team
 - b. Engaging internal experts from head office on part-time basis
 - c. Engaging external experts on part-time basis subject to approval of the management
3. Upon receiving a notice for a claim from the Contractor, the Engineer shall Review the content of the notice and check whether the contractor has adequately described the event or circumstance giving rise to the claim and the notice has been issued within 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

4. If the Contractor has not adequately described the event or circumstance giving rise to the claim for the Engineer to clearly identify the event or circumstance giving rise to the claim and its effect on the contract price and the time for completion, the Engineer shall advise the Contractor that his notice is not valid due to his failure to adequately described the event or circumstance giving rise to the claim, as required under the Contract.
5. Unless the Contractor's claim notice is issued within the stipulated time period of 28 days after the Contractor became aware, or should have become aware, of the event or circumstance, the Engineer shall inform the Contractor that the claim is rejected in accordance with the Sub-Clause 20.1 of the Conditions of Contract and therefore the Contractor is not entitled for any additional payment and/or any extension of time for completion thus discharging the Employer of all liability in connection with the claim.
6. Unless the Contractor has copied the notice of the claim to the Employer, the Engineer shall inform the Employer of such notice and shall jointly endeavour to mitigate the effect of the event or circumstance giving rise to the claim.
7. The Engineer, if the Contractor's notification is satisfactory, shall assign each claim with a serial number in the format AAAA/Claim XX (e.g. DZWS/Claim 08) and enter in to the Claim Register format of which is provided in the Attachment XX.
8. The Engineer shall inform the Contractor that his claim is noted and registered in the Claim Register, without admitting the Employer's liability for the claim.
9. The Engineer, with the assistance of the claim management team, shall identify contemporary records which should be maintained to proper evaluation of the claim and the Engineer shall inform the Contractor accordingly. The Engineer shall direct his staff to inspect/monitor maintenance of such contemporary records by the Contractor and he may also instruct the Contractor to submit copies of all such records or certain part of such records.
10. Upon submission of a fully detailed claim with detailed supporting particulars by the Contractor, the Engineer shall direct his claim management team to study the same to verify whether the Contractor is entitled for the claim in principle and if the Contractor is entitled, quantum (additional amount and/or extension of time) for which the Contractor entitled.
11. The Engineer shall give his opinion on the claim in principle within 42 days upon receiving a claim. The Engineer, if necessary, may request the Contractor to submit further information which may be required for evaluation of Contractor's claim.
12. The Engineer shall finalize his draft recommendation on a claim and initiate consultation with each party in order to get their agreement on the draft recommendation. It is prudent for the Engineer to commence consultation with the Employer first, since most contracts require Employer's specific approval for the Engineer to give his determination.
13. If it is possible to reach an agreement with both parties, the Engineer shall notify his determination based on such agreement but failing that the Engineer shall notify his determination based on a fair evaluation in accordance with the Contract, within 42 days upon receiving a claim, taking in to account all relevant facts and evidence, subject to restrictions imposed for such determination.

14. The Engineer shall include any amounts determined by him for claims in his Interim Payment Certificate, if the Contractor makes an application for the same in any of his subsequent monthly statement.
15. If the event or circumstance giving rise to a claim has a continuing effect, the Contractor's fully detailed claim shall be considered as interim and the process shall be repeated monthly until cessation of such event or circumstance when the final determination shall be given upon the Contractor's submission of final particulars on a claim.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 20.1 [**Contractor's Claims**]

ATTACHMENTS

Specimen Formats
SF/CA 51/ 01 – Format for Contractor's Claim Register

PROCEDURE NO.	CA 52		
PROCEDURE TITLE	MANAGING EXTENSIONS OF TIME		
REVISION NO.	A	REVISION DATE	10 th November 2014

SCOPE

Scope of this procedure covers activities required to be carried out with regard to claims for Extension of Time for Completion including carrying out of Delay analysis to assess the extent of EOT a contractor is entitled for.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

OVERVIEW OF GENERAL PRINCIPLES

Although managing claims for Extensions of Time (EOT) for completion is generally similar to the procedure described in Procedure No. CA 51 for Managing Contractor's Claims, there are certain distinct requirements in relation to the evaluation of such claims.

FIDIC forms of Contracts in its Sub-Clause 8.4 of Conditions of Contract provides that the Contractor is entitled for an Extension of Time (EOT) for Completion, if completion of the Works is or will be delayed by any of the following causes:

- a. A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.
- b. A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions.
- c. Exceptionally adverse climatic conditions.
- d. Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- e. Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

A Contractor will be entitled for an EOT if he suffers or will suffer a delay under following Sub-Clauses in FIDIC forms of Contracts:

- a. Sub-Clause 1.9 - Delayed Drawings or Instructions
- b. Sub-Clause 2.1 - Right of Access to the Site
- c. Sub-Clause 4.7 - Setting Out
- d. Sub-Clause 4.12 - Unforeseeable Physical Conditions
- e. Sub-Clause 4.24 - Fossils
- f. Sub-Clause 7.4 - Testing
- g. Sub-Clause 8.5 - Delays Caused by Authorities
- h. Sub-Clause 8.9 - Consequences of Suspension
- i. Sub-Clause 10.3 - Interference with Tests on Completion
- j. Sub-Clause 13.7 - Adjustments for Changes in Legislation
- k. Sub-Clause 16.1 - Contractor's Entitlement to Suspend Work
- l. Sub-Clause 17.4 - Consequences of Employer's Risks
- m. Sub-Clause 19.4 - Consequences of Force Majeure

When a valid notice is given and fully detailed claim is submitted the Engineer shall promptly determine the contractor's entitlement for such claim in principle and extent of an extension to be given, to avoid Time for Completion becoming at large. When the Time for Completion

is at large, thus having no definite completion date, it may affect the progressing of the Contract as there are no definite milestones or targets to be met.

A contractor will be entitled for an EOT, only if he suffers a delay which would extend the Time for Completion due to prolongation of work activities of the critical path effective at the time of that delay. Therefore, the Contractor should submit a proper delay analysis through Critical Path Method (CPM) preferably using a project management software such as MS Projects or Primavera.

There are several accepted methods for delay analysis and following are the methods widely used in the construction industry:

- a. Impacted As Planned analysis
- b. Time Impact analysis
- c. As-planned v as-built analysis
- d. collapsed as-built analysis

It should also be noted that the Engineer has no authority to shorten a time for completion or repeal an EOT or part of it already given.

ACTIONS REQUIRED

1. For management of claims for Extensions of Time (EOT) for Completion, the Project Director/Project Manager and the Engineer shall follow the procedure described in items 1 to 13 of the Procedure No. CA 51.
2. In addition to above, if the Contractor has a valid entitlement for an EOT, the Engineer shall direct his Claims Management Team to review the delay analysis submitted by the Contractor to assess the quantum of EOT, the Contractor is entitled for.
3. The his Claims Management Team shall review for the delay analysis, whether the Contractor has used:
 - a. an appropriate method of delay analysis
 - b. a suitable base line program and
 - c. appropriate and correct inputs
4. Upon reviewing the delay analysis, the Engineer shall initiate consultation process with each party to reach an agreement. In the event of disagreement the Engineer shall determine the Contractor's entitlement for quantum of EOT subject to specific approval of the Employer if required under the Contract.
5. The Engineer shall grant EOT only if the delay suffered is caused due to a default of the Employer/Engineer, due to a neutral event for which neither party is responsible or due to concurrent events for which both parties are responsible. The Contractor should not be granted EOT for delays due to a default of himself.
6. The Engineer shall also determine whether the Contractor is entitled for prolongation costs due to EOT granted, considering following:
 - a) the Contractor is not entitled for prolongation costs for EOT granted for concurrent delays for which both parties are responsible.
 - b) the Contractor is not entitled for prolongation costs for EOT granted under the provisions in the Contract, when such entitlement is not specifically stated (e.g. EOT granted for exceptionally adverse weather, Delays caused by Authorities)

7. The Engineer shall notify the parties of his determination on the EOT with his detailed analysis.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 8.4 [Extension of Time for Completion]

Sub-Clause 20.1 [**Contractor's Claims**]

ATTACHMENTS

Check List

CL/CA 52/ 01 – Extension of Time Check List

Specimen Letters

SL/CA 52/ 01 – Letter to Notify the Engineer's Determination on Extension of Time

PROCEDURE NO.	CA 53		
PROCEDURE TITLE	EMPLOYER'S CLAIMS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to management of Employer's Claims

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager and the Engineer shall identify events or circumstances for which an Employer's Claim could be raised including for delays for which the Contractor is responsible and delay damages could be claimed.
2. The Project Director/Project Manager or the Engineer shall notify the Contractor of the Employer's Claim within 28 days after they became aware, or should have become aware.
3. If the Employer's Claim is for an extension of the Defects Notification Period, it shall be given before the expiry of such period.
4. The Project Director/Project Manager or the Engineer shall provide the Contractor with detailed particulars which should specify the contractual or other basis of the claim and should include substantiation of the amount and/or extension to which the Employer considers himself to be entitled.
5. The Engineer shall initiate consultation with each party with regard to Employer's claim, to reach an agreement. If it is possible to reach an agreement with both parties, the Engineer shall notify his determination based on such agreement but failing that the Engineer shall notify his determination based on a fair evaluation in accordance with the Contract, within 28 days upon receiving a claim, taking in to account all relevant facts and evidence.
6. The Employer may deduct any amount determine by the Engineer as due to the Employer from the Contractor, from his any subsequent Interim Payment Certificates.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 2.5 [Employer's Claims]

Sub-Clause 4.19 [Electricity, Water and Gas]

Sub-Clause 4.20 [Employer's Equipment and Free-Issue Materials]

Sub-Clause 7.5 [Rejection]

Sub-Clause 7.6 [Remedial Works]

Sub-Clause 8.6 [Rate of Progress]

Sub-Clause 8.6 [Delay Damages]

Sub-Clause 9.4 [Failure to Pass Tests on Completion]

Sub-Clause 9.4 [Extension of Defects Notification Period]

Sub-Clause 11.4 [Failure to Remedy Defects]

Sub-Clause 15.4 [Payment after Termination]

Sub-Clause 18.1 [General Requirements for Insurances]
Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]

ATTACHMENTS

Specimen Formats

SF/CA 53/ 01 – Format for Employer's Claim Register

PROCEDURE NO.	CA 54		
PROCEDURE TITLE	SUSPENSION OF WORK		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to suspension of progress of the Works or part of it.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC.

ACTIONS REQUIRED

1. The Engineer shall only instruct the Contractor to suspend progress of part or all of the Works, when it is absolutely necessary. If the suspension is caused due to a reason for which the Contractor is responsible and the cause is notified to the Contractor, he will not be entitled to any extension of time or additional payment due to such suspension. The Contractor is required to protect, store and secure such part or the Works against any deterioration, loss or damage during such suspensions.
2. When the instruction for suspension is given due to a fault of the Contractor, the Engineer shall ensure that the Contractor is notified of the cause of the suspension.
3. The Engineer shall ensure that the Contractor protect, stores and secures such part or the Works against any deterioration, loss or damage during suspensions.
4. If the instruction for suspension is given due to a cause for which, the Engineer and/or the Employer are/is responsible, the Engineer shall take every attempt to remove or mitigate such cause jointly with the Employer, in order to resume the works as early as possible.
5. If a suspension affects the work on Plant or delivery of Plant and/or Materials for more than 28 days, the Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions
6. The Engineer and/or the Employer shall take every endeavour to avoid prolongation of suspensions over 84 days as that would entitle the Contractor to omit the affected part of the Works if the suspension affects only a part of the Works or terminate the Contract, if the suspension affects the whole of the Works.
7. Upon the cessation of the cause for suspension, the Engineer shall give his permission/instruction to proceed.
8. The Engineer and the Contractor shall carry out a joint inspection to identify any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension. The Engineer shall issue an instruction for a variation to the Contractor to rectify the Works, Plant and Materials, affected by the suspension.

9. If the instruction for suspension is given due to a fault of the Contractor, he should bear the costs of any consequences and otherwise costs shall be paid to the Contractor and the Time for Completion shall be extended under the claims procedure.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 8.8 [Suspension of Work]

Sub-Clause 8.9 [Consequences of Suspension]

Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension]

Sub-Clause 8.11 [Prolonged Suspension]

Sub-Clause 8.12 [Resumption of Work]

ATTACHMENTS

Specimen Letters

SL/CA 54/ 01 – Instruction to Suspend Works

PROCEDURE NO.	CA 55		
PROCEDURE TITLE	CERTIFICATION OF INTERIM AND FINAL PAYMENT CERTIFICATES		
REVISION NO.	A	REVISION DATE	24 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to certification of interim and final payment certificates

APPLICABILITY

This procedure is applicable to any contract awarded or to be awarded by the Public Entity.

ACTIONS REQUIRED

Certification of Interim Payments

1. The Engineer shall measure the works executed up to the end of the month for which the interim payment is to be certified, either taking actual on site measurements or from records. The Engineer is required to give reasonable notice to the Contractor's Representative, for him to attend or send a qualified representative to assist the Engineer in taking measurements.
2. When the measurements are from records, the Contractor's agreement to such records shall be sought and if the Contractor disagrees with such records and notify the Engineer of such disagreement with particulars of any inaccuracies in the records, the Engineer shall vary or confirm such records upon reviewing the records in the light of any comments given by the Contractor.
3. The Engineer shall ensure that the measured works are complying with the contractual requirements and he may request further particulars from the Contractor, such as test certificates/reports and records of measurements carried out by the Contractor.
4. The Engineer shall ensure that the Contractor submits, a proposed breakdown of each lump sum price in the Schedules, within 28 days after the Commencement Date. The Engineer may take account of the breakdown when certifying interim payments.
5. The Engineer shall agree or determine the estimated contract value of the Works executed by evaluating each item of work, based on the measured quantity and the appropriate rate applicable to that item of work. However, when the Contract Price constitutes of a lump sum with a schedule of payments specifying the instalments to be paid, such instalments stated in the schedule of payments shall be the estimated contract value.
6. The Engineer shall review the Contractor's Application for Interim Payment Certificates and agree or determine estimated contract value of the Works executed and the Contractor's Documents produced including Variations, up to the end of the month.
7. The Engineer shall review the Contractor's Application for Interim Payment Certificates and agree or determine any amounts to be added and/or deducted for changes in legislation and changes in cost.

8. The Engineer shall determine any amounts to be deducted as retention money within the limit specified in the Contract or any amounts to be released as retention money upon handing over of the works or expiry of the Defect Notification Period.
9. The Engineer shall determine any amount to be paid as advance payment or any amount to be deducted as repayment of the advance payment as specified in the Contract.
10. The Engineer shall determine any amounts to be added and deducted for Plant and Materials in accordance with the Contract.
11. The Engineer shall determine any amounts to be added or deducted due to a claim under the Contract or otherwise, due to a decision of the DB/DAB, due to an amicable settlement or an arbitration award.
12. The Engineer shall certify all above amounts as appropriate upon deduction of amounts certified in all previous Payment Certificates, within 28 days after the Engineer receives the Statement and supporting documents.
13. The Employer's Representative shall ensure that amounts certified by the Engineer as interim payments are paid to the Contractor within 56 days after the Engineer receives the Statement and supporting documents.
14. Certification of Final Payment
15. The Engineer shall ensure that the Contractor submits, to the Engineer, a draft final statement with supporting documents within 56 days after the Contractor receiving the Performance Certificate. Contractor's draft final statement should include the value of all work done in accordance with the Contract and any further sums (under Contractor's Claims) which the Contractor considers to be due to him under the Contract or under the law governing the Contract.
16. The Engineer shall review the draft final statement to verify the accuracy of measurements of the works executed, which may require the Engineer either to take actual on site measurements or use records available. The Engineer shall also review amounts claimed by the Contractor for entitlement and accuracy of the quantum.
17. If the Engineer needs further information to verify the Contractor's draft final statement, he should request the Contractor to submit such information within 28 days from receipt of said draft final statement.
18. The Engineer, upon consultation with the Employer and the Contractor, agree to changes required to make the Contractor's draft final statement, acceptable to him.
19. When the Contractor submits its Final Statement incorporating changes agreed with the Engineer to the Contractor's draft final statement, the Engineer shall review it to ensure that it is prepared as agreed with him.
20. The Engineer shall issue the Final Payment Certificate to the Employer and the Contractor within 28 days after receiving the Final Statement and discharge in accordance with the terms of the Contract.

21. If the Contractor fails to submit the Contractor's draft final statement, Final Statement and/or discharge, the Engineer shall request the Contractor to do so. If the Contractor further fails to submit such documents within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due to the Contractor.
22. The Employer's Representative shall ensure that amounts certified by the Engineer in the Final Payment Certificate are paid to the Contractor within 56 days after the Employer receives this Payment Certificate.

REFERENCES

Procurement Guidelines

Sub Section 8.12.1 (a)

FIDIC Conditions of Contract MDB 2010

Sub-Clause 12.1[Works to be Measured]

Sub-Clause 12.2 [Method of Measurement]

Sub-Clause 12.3 [Evaluation]

Sub-Clause 14.3[Application for Interim Payment Certificates]

Sub-Clause 14.4[Schedule of Payments]

Sub-Clause 14.5 [Plant and Materials intended for the Works]

Sub-Clause 14.6 [Issue of Interim Payment Certificates]

Sub-Clause 14.7 [Payment]

Sub-Clause 14.8 [Delayed Payment]

Sub-Clause 14.10 [Statement at Completion]

Sub-Clause 14.11 [Application for Final Payment Certificate]

Sub-Clause 14.12 [Discharge]

Sub-Clause 14.12 [Issue of Final Payment Certificate]

ATTACHMENTS

Specimen Formats

SF/CA 55/ 01 – Format for Interim Payment Certificate

PROCEDURE NO.	CA 55 A		
PROCEDURE TITLE	DETERMINATION OF ESTIMATED CONTRACT VALUE		
REVISION NO.	A	REVISION DATE	4 th October 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to determination of estimated contract value of Works which is required for certification of interim and final payment certificates

APPLICABILITY

This procedure is applicable to any contract awarded or to be awarded by the Public Entity.

ACTIONS REQUIRED

Estimated Contract Value of Measure and Pay Items

1. When determining contract value of each Measure and Pay BOQ item, the Engineer shall measure the works executed up to the end of the month for which the interim payment is to be certified, either taking actual on site measurements or from records.
2. The Engineer shall determine the estimated contract value of the Works executed by evaluating each item of work, based on the measured quantity and the appropriate rate applicable to that item of work in the BOQ.

Estimated Contract Value of Lump Sum Items

3. When determining contract value of each Lump Sum item, the Engineer shall evaluate the contract value of such items, considering the time involved in completing such items. When evaluating a Lump Sum item such as for purchasing vehicles for the Employer/Engineer, the whole Lump Sum shall be taken as the contract value upon handing over of such vehicles to the Employer.
4. When evaluating a Lump Sum item such as providing certain services to the Engineer which would continue during a period of time, contract value shall be determined based on a monthly rate calculated using the Lump Sum amount and the period of time the service is envisaged to be provided.

Estimated Contract Value of Provisional Sum Items

5. When determining contract value of Provisional Sum items, procedure described in the Procedure No. CA 47 shall be followed.

Estimated Contract Value When Contract Price constitutes of a Lump Sum

6. When the Contract Price constitutes of a lump sum with a schedule of payments specifying the instalments to be paid, such instalments stated in the schedule of payments shall be the estimated contract value.
7. The Engineer shall ensure that the Contractor submits, a proposed breakdown of each lump sum price in the Schedules, within 28 days after the Commencement Date.

8. The Engineer may take in to account of the breakdown of each lump sum price in the Schedules submitted by the Contractor when determining contract value of Lump Sum contracts.

REFERENCES

Procurement Guidelines

Sub Section 8.12.1 (a)

FIDIC Conditions of Contract MDB 2010

Sub-Clause 12.1 [Works to be Measured]

Sub-Clause 12.2 [Method of Measurement]

Sub-Clause 12.3 [Evaluation]

ATTACHMENTS

Please refer to the Specimen Format SF/CA 55/ 01 – Format for Interim Payment Certificate

PROCEDURE NO.	CA 56		
PROCEDURE TITLE	ENGINEER'S DETERMINATIONS		
REVISION NO.	A	REVISION DATE	24 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to Engineer's Determinations.

APPLICABILITY

This procedure is applicable to any contract awarded or to be awarded by the Public Entity.

ACTIONS REQUIRED

1. The Engineer, unless otherwise agreed by both Parties, should not delegate his authority to his assistants to make determinations on any matter for which such authority is provided to him within the terms of the Contract.
2. When the Contract requires the Engineer to agree or determine any matter, he should first consult each party and attempt to reach agreement, failing which he should make a fair determination, taking in to account all relevant information available.
3. The Engineer shall notify both Parties of any agreement reached or any determination made, with supporting particulars, within 28 days from the receipt of the corresponding claim or request unless otherwise specified in the Contract.
4. The Engineer is required to agree or determine Contractor's claims for:
 - a. An extension of time for any delay suffered by the Contractor due to an event for which the Employer is responsible or due to a neutral event for which neither party is responsible;
 - b. For payment of additional amounts for any costs incurred by or any damages suffered by the Contractor due to an event for which the Employer is responsible.
5. The Engineer is required to agree or determine Employer's claims for:
 - a. An extension of the Defects Notification Period;
 - b. Payment of amounts for which the Employer is entitled from the Contractor.
6. The Engineer is also required to agree or determine:
 - a. Reduction in Contract Price for failure to pass repeated Tests on Completion when a Taking-Over Certificate is issued on the Employer request;
 - b. Proportional reduction in delay damages, when a Taking-Over Certificate has been issued for a part of the Works.

- c. A reasonable reduction in Contract Price If the Contractor fails to remedy any defect or damage by the date notified by the Employer and such remedial work is to be executed at the cost of the Contractor.
- d. The Contract Price by evaluating each item of work at the end of each month.
- e. A fee to the Contractor for design changes involved in a proposal for Value Engineering when such design changes results in a reduction in the contract value of the relevant part of the Works.
- f. Revised instalments, taking in to account of the extent to which progress is less or more than that of the instalments stated in the Contract, when the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid and these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based.
- g. Value of the Works, Goods and Contractor's documents, and any other sums due to the Contractor at the date of termination.
- h. New rates or prices when relevant works are instructed as variations and no appropriate rates or prices are specified in the Contract for such works or measured quantity of any item is changed by more than 25% from quantity of this item in the Bill of Quantities or other Schedule.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 3.2 [Delegation by the Engineer]
Sub-Clause 3.5 [Determinations]

ATTACHMENTS

Specimen Letters

SL/CA 56/ 01 – Engineer's Determination

PROCEDURE NO.	CA 57		
PROCEDURE TITLE	DEDUCTION AND RELEASE OF RETENTION MONEY		
REVISION NO.	A	REVISION DATE	25 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to deduction and release of Retention Money.

APPLICABILITY

This procedure is applicable to any contract awarded or to be awarded by a Public Entity.

ACTIONS REQUIRED

1. The Engineer should deduct Retention Money from each Interim Payment Certificate at the percentage given in the Appendix to the Bid or Contract Data
2. The Engineer shall ensure that amount of Retention Money withheld should not exceed the limit for Retention Money stated in the Appendix to the Bid or Contract Data.
3. The Engineer shall certify payment of half of the Retention Money withheld to the Contractor when the Taking-Over Certificate is issued for the Works. If the Taking-Over Certificate is issued only for a Section or part of the Works, the Engineer shall only certify payment of a proportion of half of the Retention Money, calculated using the ratio between the estimated contract value of the Section/part and estimated final Contract Price.
4. The Engineer shall certify payment of the second half of the Retention Money withheld to the Contractor after the latest of the expiry dates of the Defects Notification Periods. If a Taking-Over Certificate is issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid after the expiry date of the Defects Notification Period for that Section and the proportion shall be calculated using the ratio between the estimated contract value of the Section/part and estimated final Contract Price.
5. When any remedial works are remaining uncompleted, the Engineer shall withhold certification of the estimated cost of such work until it is executed.
6. The Engineer is required to release the second half of the Retention Money, if the Contractor submits a valid Retention Money Guarantee for the value of the Retention Money withheld. The Retention Money Guarantee shall be of similar conditions that are specified for the Performance Security.

REFERENCES

Procurement Guide

Sub Section 5.4.6 of Supplement – 18 which superseded original content

FIDIC Conditions of Contract MDB 2010

Sub-Clause 14.3 [Application for Interim Payment Certificates]

Sub-Clause 14.9 [Payment of Retention Money]

ATTACHMENTS

Please refer to the Specimen Format SF/CA 55/ 01 – Format for Interim Payment Certificate

PROCEDURE NO.	CA 58		
PROCEDURE TITLE	DAY WORK		
REVISION NO.	A	REVISION DATE	25 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to execution of works on day work basis.

APPLICABILITY

This procedure is applicable to any contract awarded or to be awarded by a Public Entity.

ACTIONS REQUIRED

1. The Engineer shall ensure that day work basis is only used for works of minor or incidental nature which are instructed as variations.
2. The Engineer shall ensure that the Contractor submits quotation for purchase of materials and hiring of equipment and temporary works, prior to making orders for the same.
3. The Engineer shall ensure that the Contractor submits day work records for each day on the following day and such records shall include:
 - a. Names, occupations and time of Contractor's Personnel involved in such works.
 - b. Identification, type and time of Contractor's Equipment and Temporary Works.
 - c. The quantities and types of Plant and Materials used.
4. The Engineer shall review the day work records submitted by the Contractor and he shall sign them if they are correct or acceptable.
5. The Engineer shall ensure that the Contractor submits priced statement for day works prior to include such amounts in the Monthly Statement.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 13.6 [Day work]

ATTACHMENTS

Specimen Formats

SF/CA 58/ 01 – Format for Day work Order

SF/CA 58/ 02 – Format for Day work Records

Part Three

COMPLETION STAGE

CONTENT OF PROCEDURES - COMPLETION STAGE

Procedure No.	Procedure	Revision Status	Date
CA59	Termination of Contract	B	9Sept 2015
CA60	Force Majeure	B	9Sept 2015
CA61	Taking Over of Works	B	9Sept 2015
CA62	Management of as-Built Drawings	B	9Sept 2015
CA63	Defect Notification Period	B	9Sept 2015
CA64	Issuing of the Performance Certificate	B	9Sept 2015
CA65	Close Out of the Contract	B	9Sept 2015
CA66	Handing Over of Completed Works and Documents/Information Including as Built Information to the Operation/Maintenance Team	B	9Sept 2015

Procedures CA 59 to CA 66

PROCEDURE NO.	CA59		
PROCEDURE TITLE	Termination of Contract		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers terminating a contract by the Employer due to default of a Contractor or for the convenience of the Employer.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

For termination of a contract due to default of the Contractor

1. The Project Director/ Project Manager shall ensure that no contract is terminated without an adequate assessment of the situation based on pros and cons of such action, approval from the relevant authority, consent of the funding agency and after obtaining the legal opinion of the Attorney General's Department.
2. The Project Director/ Project Manager shall confirm through a thorough review that an event or circumstance, occurrence of which is stated in the Contract (Sub-Clause 15.2 [Termination by Employer] in FIDIC Red Book and Pink Book and ICTAD SBD/02) as would entitled the Employer for termination of the Contract, has occurred.
3. The Project Director/ Project Manager shall issue the Notice of Termination with the signature of the proper authority, giving 14 days notice to the Contractor. In the event of termination due to the Contractor's bankruptcy/insolvency or the Contractor having given/offered bribes/gifts/commissions as an inducement or reward, a contract can be terminated immediately.
4. The Project Director/ Project Manager shall expel the contractor from the site and ensure that the Contractor leaves the Site and delivers any required goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer.
5. The Project Director/ Project Manager shall ensure that the Contractor complies immediately with any instructions included in the termination notice for the assignment of any subcontract, and for any action required to protect life and/or property and for the safety of the Works.
6. Project Director/ Project Manager shall take over any materials/plants at site, which are required for the completion of the Works, only upon a thorough inspection to ensure their quality and a count to determine the exact quantity available.

7. Project Director/ Project Manager may retain and use any of the Contractor's Equipment and/or temporary works for the completion of the Works and upon completion of the Works such equipment and temporary works shall be released to the Contractor after notifying him.
8. The Project Director/ Project Manager shall verify whether the Contractor has fulfilled his obligation towards third parties in repairing /compensating any third party damages. The Project Director/ Project Manager may take suitable action to redress the affected parties through the insurance provider or through other means. He should consider informing such parties of the situation.
9. The Project Director/ Project Manager shall inform utility agencies and other authorities such as RDA and Inland Revenue Department of the termination to enable them to recover any amounts due from the Contractor.
10. The Engineer shall agree to or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for works executed in accordance with the Contract at the time of termination.
11. Project Director/ Project Manager shall assess:
 - a. Costs of completing the Works including execution of balance works and remedying of any defects, by utilizing Contractor's subcontractors or other contractors.
 - b. Any delay damages.
 - c. All other costs to be incurred by the Employer including any supervision costs, administration costs and extra costs of completing the Works.
 - d. Any losses and other damages incurred by the Employer.
12. Project Director/ Project Manager shall raise Employer's Claims for above amounts which are to be recovered from the Contractor.
13. Project Director/ Project Manager shall pay any balance to the Contractor after recovering any such losses, damages and extra costs from any amount due to the Contractor under Valuation at Date of Termination.
14. If any amount due to the Contractor is not sufficient to recover all amounts due from the Contractor, the Project Director/ Project Manager shall take action to demand the amounts guaranteed under the Performance Security and Retention Money Guarantee (if any).

For termination of a contract for the convenience of the Employer

15. When continuation of the execution of the Contract is no longer beneficial to the Employer or it is not feasible due to changed circumstances, the Employer is entitled to terminate the Contract for his convenience, provided that he is not intending to execute the remaining works of the Contract by himself or by another contractor.

16. Project Director/ Project Manager assess the situation and if he is of the opinion that termination is beneficial to the Employer, he shall seek approval of the relevant authority and the funding agency upon providing all information relevant to the Contract, including his reasoned recommendation.
17. The Project Director/ Project Manager shall ensure that contract is terminated only upon obtaining approval of the relevant authority and consent of the funding agency. The Project Director/ Project Manager may obtain considered legal opinion of the Attorney General's Department if necessary.
18. The Project Director/ Project Manager shall issue the Notice of Termination with the signature of the proper authority, giving 14 days notice to the Contractor.
19. The Project Director/ Project Manager shall return the Performance Security to the Contractor, if there are no amounts to be recovered from the Contractor.
20. The Termination of the Contract will be effective after 28 days of the receipt of the notice of termination by the Contractor or Employer returning the Performance Security to the Contractor, whichever is later.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 15.2 [Termination by Employer]

Sub-Clause 15.3 [Valuation at Date of Termination]

Sub-Clause 15.4 [Payment after Termination]

Sub-Clause 15.5[Employer's Entitlement to Termination for Convenience]

ATTACHMENTS

Specimen Letters

SL/CA 59/ 01 – Termination of the Contract

SL/CA 59/ 02 – Termination of the Contract for Employer's Convenience

PROCEDURE NO.	CA60		
PROCEDURE TITLE	Force Majeure		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out subsequent to a Force Majeure event.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/ Project Manager shall ensure that each exceptional event or circumstance is carefully reviewed to determine whether it constitutes a Force Majeure event as defined in the Sub-Clause 19.1 of the General Conditions of Contract, which is beyond the control of both parties to a Contract.
2. If such exceptional event or circumstance is a Force Majeure event, the Project Director/ Project Manager shall assess the potential consequences of such Force Majeure event to decide upon the actions to be taken.
3. If the Force Majeure event prevents the Employer or the Engineer from performance of its obligations under the Contract, the Project Director/ Project Manager shall notify the Contractor of such event specifying the obligations, the performance of which is or will be prevented, within 14 days after he became aware of such event.
4. The Project Director/ Project Manager shall notify the Contractor when the Force Majeure event ceases and no it longer affects the performance of any contractual obligation by the Employer or the Engineer.
5. If a Force Majeure event prevents a Contractor from performance of its obligations under the Contract, within 14 days after he became aware of such event he should notify the Employer of such event specifying the obligations, the performance of which is or will be prevented.
6. The Project Director/Project Manager shall ensure that all contemporary records pertaining to any delays suffered and any additional costs incurred by the Contractor are maintained.
7. The Project Director/Project Manager shall ensure that if the Contractor suffers delay and/or incurs Cost by reason of such Force Majeure event, the Contractor is given an extension of time for completion and he is paid all costs incurred including costs incurred in repairing/replacing any part of the Works, Plants, Materials, Contractor's Equipment, Plant and/or Temporary Works damaged and/or destroyed by Force Majeure event, except any amount received through insurance policies.

8. If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days or for multiple periods which total more than 140 days due to a notified Force Majeure event, making either Party entitled for termination of the Contract upon giving a notice of termination, the Project Director/ Project Manager shall assess the situation and take a decision in consultation with the higher management of the organization, line ministry and the Attorney General's Department on whether to terminate the Contract.
9. If the Contract is terminated by either party due to a Force Majeure event, such termination is effective upon 7 days of giving a notice of termination and the Project Director/Project Manager shall ensure that the Contractor:
 - a. Ceases all further work and hand over all completed works.
 - b. Hand over all Contractor's Documents, Plant and Materials for which the Contractor has received payment.
 - c. Remove all Temporary Works and Contractor's Equipment from the Site.
10. If the Contract is terminated by either party due to a Force Majeure event, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:
 - a. Amounts payable for any work carried out.
 - b. Cost of Plants and Material delivered to the site.
 - c. Cost of Plants and Material for which the Contractor is liable to accept delivery.
 - d. Costs or liabilities which were reasonably and necessarily incurred by the Contractor.
 - e. Cost of removal of Temporary Works and Contractor's Equipment from the Site.
 - f. Cost of repatriation of the Contractor's staff and labour.
11. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance.
12. The Project Director/Project Manager shall ensure that the Contractor is discharged from further performance of the Contract.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 19.1 [Definition of Force Majeure]

Sub-Clause 19.2 [Notice of Force Majeure]

Sub-Clause 19.3 [Duty to Minimize Delay]

Sub-Clause 19.4 [Consequences of Force Majeure]

Sub-Clause 19.6 [Optional Termination, Payment and Release]

Sub-Clause 19.7 [Release from Performance]

ATTACHMENTS

Specimen Letters

SL/CA 60/ 01 – Termination of the Contract Subsequent to Force Majeure

SL/CA 60/ 02 – Notice to Release from Performance

PROCEDURE NO.	CA 61		
PROCEDURE TITLE	TAKING OVER OF WORKS		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to taking over of the Works, Sections or part of it.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC.

ACTIONS REQUIRED

1. Unless it is absolutely necessary, the Employer should not use any part of the works until such part is substantially completed, as in such an event it is deemed to be taken over by the Employer.⁴⁸
2. Upon receiving a notice/application from the Contractor to take over of the Works or Section, the Engineer and the Employer shall verify whether the Works or the Section for which a Taking-Over certificate is applied, are substantially completed except for some minor outstanding works and defects⁴⁹ which will not substantially affect the use of the Works or Section for their intended purpose.
3. The Engineer upon reviewing the completion status of the Works or Section shall arrange a joint inspection of the Works or Section for which the Contractor has applied for a Taking-Over Certificate, with the Employer and the Contractor.
4. During the joint inspection, a defect list (schedule of defects, punch list or snagging list) shall be prepared to include all outstanding works, defects and damages observed/identified.
5. The Engineer upon reviewing the completion status of the Works or Section, within 28 days upon receiving the Contractor's notice, shall either:
 - a. Issue a Taking-Over Certificate for whole of the Works or Section, to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, if the Works or Section have been substantially completed; or

⁴⁸Any major form of contract requires the Employer to take over the Works or Section, upon:

- (a) whole of the Works or Section have been completed in accordance with the Contract,
- (b) achieving the passing of the Tests on Completion and
- (c) Taking-Over Certificate for the Works or Section has been issued, or is deemed to have been issued in accordance with the Contract by the Engineer.

⁴⁹The Contractor is entitled for payment of Cost incurred plus profit, If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, subject to Contractor giving notice to the Engineer under Sub-Clause 20.1 [Contractor's Claims].

- b. reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued, if substantial amount of works are required to be done by the Contractor to enable the Taking-Over Certificate to be issued.
- 6. The Engineer shall ensure that a response, either issuing a Taking-Over certificate or rejecting issuing of the same, is issued within 28 days upon receiving the Contractor's notice/application to avoid a situation of a Taking-Over certificate deemed to be issued due to such failure.
- 7. The Engineer may issue a Taking-Over Certificate for any part of the Permanent Works, upon obtaining prior approval of the Employer.
- 8. The Engineer shall issue a Taking-Over Certificate for any part of the Permanent Works, which the Employer has used before a Taking-Over Certificate is issued. That part shall be deemed to have been taken over as from the date on which it is used.
- 9. The Engineer shall issue a Taking-Over Certificate for the Works or Section, if the Contractor is prevented from carrying out the Tests on Completion for more than 14 days, by a cause for which the Employer is responsible. The Works or Section deemed to have taken over on the date when the Tests on Completion would otherwise have been completed.

REFERENCES

Sub-Clause 10.1 [Taking Over of the Works and Sections]
Sub-Clause 10.2 [Taking Over of Parts of the Works]
Sub-Clause 10.3 [Interference with Tests on Completion]
Sub-Clause 10.4 [Surfaces Requiring Reinstatement]

ATTACHMENTS

Specimen Letters

SL/CA 61/ 01 – Rejection of Application for Taking-over Certificate
SL/CA 61/ 02 – Taking-over Certificate for the Works/Section

PROCEDURE NO.	CA62		
PROCEDURE TITLE	Management of As-Built Drawings		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out for the preparation of “As-Built” drawings.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Engineer shall ensure that his staff maintains a dedicated set of drawings on which notes of as constructed changes to the drawings identified by taking actual measurements of completed works are progressively recorded.
2. The Engineer shall ensure that the Contractor is regularly keeping accurate, properly marked-up as-built drawings.
3. The Engineer shall ensure that As-Built drawings prepared by the Contractor represent as constructed information of the Works such as positions, dimensions and levels by reviewing them against information available.
4. Before issuing a Taking-Over Certificate, the Engineer shall ensure that the Contractor submits all As-Built drawings as required.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 4.1 [Contractor’s General Obligations] Item (d)

ATTACHMENTS

Specimen Formats

SF/CA 62/ 01 – Format for As-Built Drawing Register

PROCEDURE NO.	CA 63		
PROCEDURE TITLE	DEFECT NOTIFICATION PERIOD		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out during the Defects Notification Period.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC.

ACTIONS REQUIRED

1. The Employer and the Engineer shall agree with the Contractor for a schedule for completion of any works outstanding at the time of issuing the Taking-Over Certificate and remedying of any defects or damages identified before the issuing of the Taking-Over Certificate, which are included in the defect list (punch list).
2. The Employer and the Engineer, during the Defect Notification Period, shall monitor the execution of works which are outstanding at the time of issuing the Taking-Over Certificate and remedying of any defects or damages.
3. The Employer and the Engineer, during the Defect Notification Period, shall arrange regular inspections to identify any defects or damages and such defects or damages shall be entered in to the "List of Defects subsequent to TOC" together with any other defects or damages identified by other stake holders who are using or operating the Works/Section.
4. The Employer and the Engineer shall notify the Contractor of any defects or damages identified during the Defect Notification Period.
5. The Engineer shall instruct the Contractor to search for the cause of any defect, if necessary, using an appropriate method such as site investigation and/or testing. Cost of such search shall be at the cost of the Contractor if the cause of such defect is attributable to the Contractor.
6. The Employer and the Engineer, during the Defect Notification Period, shall also monitor remedying of any defects or damages identified after the issuing of the Taking-Over Certificate, which are notified to the Contractor by the Employer or the Engineer.
7. The Engineer shall recover the cost of remedying of any defects and damages which are at the risk and cost of the Contractor, when the cause of such defects and

damages are attributable to the Contractor, through following the Employer's Claim process.

8. The Engineer shall instruct a variation for remedying of any defects or damages, causes of which are not attributable to the Contractor.
9. If the Contractor fails to remedy any defect or damage within a reasonable time agreed with the Engineer and the Employer, the Employer shall notify the Contractor of a date by which the defect or damage is to be remedied.
10. If the Contractor fails to remedy the defect or damage by the notified date and this remedial work was to be executed at the cost of the Contractor as the cause of such defect is attributable to the Contractor, the Employer shall either:
 - a. Carry out the work himself or by others and recover the costs reasonably incurred by him.
 - b. Request the Engineer to agree or determine a reasonable reduction in the Contract Price, or
 - c. Terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use due to the defect or damage.
11. Upon requested by the Contractor, the Employer may give his consent to remove items of Plant from the Site for the purposes of repair, if such defect or damage cannot be remedied expeditiously on the Site, subject to the Contractor providing an appropriate security for the full replacement cost of these items, such as increasing the amount of the Performance Security.
12. The Engineer shall extend the Defects Notification Period for the Works or a Section, if the Works, Section or a major item of Plant cannot be used for the purposes for which they are intended by reason of a defect or damage attributable to the Contractor, subject to the Employer/ Engineer giving a notice for a Employer's Claim prior to the expiration of the Defects Notification Period. However the Engineer shall not extend a Defects Notification Period by more than two years.
13. The Engineer shall arrange for a review of the Contractor's Documents and a joint inspection of the Works or Section, with the Employer and the Contractor to ensure that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period.
14. The Engineer shall issue the Performance Certificate to the Contractor with a copy to the Employer within 28 days after the latest of the expiry dates of the Defects Notification Periods, unless the Contractor fails to submit all the Contractor's Documents and complete and test all the Works, including remedying any defects and damages, in accordance with the Contract.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects]

Sub-Clause 11.2 [Cost of Remedying Defects]

Sub-Clause 11.3 [Extension of Defects Notification Period]

Sub-Clause 11.4 [Failure to Remedy Defects]

ATTACHMENTS

Specimen Formats

SL/CA 63/ 01 – Notification of Defects during Defect Notification Period

PROCEDURE NO.	CA64		
PROCEDURE TITLE	Issuing of the Performance Certificate		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to issuing of the Performance Certificate which is considered as the completion of the Contractor's obligations to perform under the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. Since the Issuing of the Performance Certificate constitutes acceptance of the Works by the Engineer/Employer, the Engineer shall ensure that the Performance Certificate is issued to the Contractor only upon completing and testing of all the Works, including remedying any defects and submission of all the Contractor's Documents.
2. The Engineer shall issue the Performance Certificate to the Contractor within 28 days after the latest of the expiry dates of the Defects Notification Periods, with a copy to the Employer, stating the date on which the Contractor completes his obligations under the Contract.
3. The Employer shall ensure that the Contractor removes any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site within 28 days after receipt by the Contractor of the Performance Certificate.
4. The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.
5. The Employer shall ensure that if the Contractor fails to remove any remaining items after 28 days of receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of such items remaining in the site.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 11.9 [Performance Certificate]

ATTACHMENTS

Specimen Letters
SL/CA 64/ 01 – Performance Certificate

PROCEDURE NO.	CA 65		
PROCEDURE TITLE	CLOSE OUT OF THE CONTRACT		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to closing out of the Contract.

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that the Contractor commences closing out of the Contract and complete removing of any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site, clears the Site, within 28 days upon receiving the Performance Certificate.
2. The Project Director/Project Manager shall ensure that the Contractor submits to the Engineer, a draft final statement with supporting documents showing in detail, the value of all work done in accordance with the Contract, and any further sums which the Contractor considers to be due to him under the Contract or otherwise within 56 days after receiving the Performance Certificate.
3. The Engineer shall take every endeavour to reach an agreement with the Contractor to finalize the Final Statement of the Contractor in order to issue the Final Payment Certificate.
4. The Engineer, before issuing the Final Payment Certificate, shall obtain a discharge from the Contractor and such discharge should confirm that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract
5. The Project Director/Project Manager and the Engineer shall make arrangements to wind up the project and following activities shall be carried out:
 - a. Packing and labelling of all project documents and handing over them to a person nominated by the Management.
 - b. Backing up of all information in the Server and the computer network.
 - c. Handing over of all buildings, furniture and equipments to persons nominated by the Management.
 - d. Transfer or terminate all staff involved in the project as directed by the Management.
 - e. Drafting of the Final Completion Report.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 11.11 [Clearance of Site]

Sub-Clause 14.11 [Application for Final Payment Certificate]

Sub-Clause 14.12 [Discharge]

ATTACHMENTS

Checklists

CL/CA 65/ 01 – Checklist for Closing out of the Contract

PROCEDURE NO.	CA 66		
PROCEDURE TITLE	HANDING OVER OF COMPLETED WORKS AND DOCUMENTS/INFORMATION INCLUDING AS BUILT INFORMATION TO THE OPERATION/MAINTENANCE TEAM		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to handing over of completed works and documents/information including as built information to the operation/maintenance team

APPLICABILITY

This procedure is applicable to any contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that a representative of the Operation and Maintenance team participates in the taking over of the Works from the Contractor including the joint inspection.
2. The Project Director/Project Manager shall arrange back to back handing over of the Works to the Operation and Maintenance team on the same day.
3. The Project Director/Project Manager shall ensure that following items are handed over to the representatives of the Operation and Maintenance team, in addition to the Works:
 - a. As-built documents
 - b. Operation and Maintenance Guides (if applicable)
 - c. Spare parts, spare materials and certain consumables
 - d. Tools and accessories
 - e. Inspection and test equipments
 - f. Warranties for equipment
 - g. Catalogues for equipment
 - h. Keys including master keys
 - i. Documents relating to utility accounts
 - j. Contact information of the Contractor, sub contractors and equipment suppliers
 - k. Licenses issued by authorities
 - l. Computer storage media containing software

REFERENCES

None

ATTACHMENTS

Checklists

CL/CA 66/ 01 – Checklist for Items to be Handed Over to O&M Division

Part Four

DISPUTE RESOLUTION

CONTENT OF PROCEDURES – DISPUTE RESOLUTION

Procedure No.	Procedure	Revision Status	Date
CA67	Adjudication	A	10 Nov 2014
CA68	Amicable Settlement	A	10 Nov 2014
CA69	Arbitration	A	10 Nov 2014

Procedures CA 67- CA 69

PROCEDURE NO.	CA 67		
PROCEDURE TITLE	Adjudication		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to establishment and functioning of Dispute Boards/Dispute Adjudication Boards (DB/DAB) including referring a dispute to the DB/DAB for decision as well as defending the position of the Employer in a dispute referred to DB/DAB by a Contractor.

APPLICABILITY

This procedure is applicable to any Contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD

General Principles

Disputes may arise due to a variety of reasons under a Contract. FIDIC or ICTAD conditions of Contracts provide a multi-tiered dispute resolution scheme with escalating severity for resolving disputes arising out of and in connection with a Contract. Adjudication is the first attempt in resolving a dispute through such multi-tiered dispute resolution scheme. Adjudication is a quick and relatively inexpensive way of resolving disputes in construction Contracts. For the purpose of resolving such disputes expeditiously, Contracts require appointment of Dispute Boards/Dispute Adjudication Boards. Usually Dispute Boards/Dispute Adjudication Boards, which should be established at the commencement of the Contract in accordance with the terms of the Contract, consist of either a sole adjudicator or a panel of three adjudicators with one of them acting as the chairman. Mandate of the Dispute Boards/Dispute Adjudication Boards under FIDIC, includes not only resolution of disputes but also providing advice to parties to prevent potential problems or claims from becoming disputes.

The DB is an essential component in a Contract with the aim of assisting the Parties and the Engineer to prevent disagreements from becoming formal Disputes. If a formal Dispute cannot be avoided, the DB makes a Decision on the Dispute which is binding on both Parties and the Engineer unless either party gives its notice of dissatisfaction regarding the decision of the DB/DAB.

ACTIONS REQUIRED

1. The Project Director/Project Manager shall ensure that a Dispute Board/Dispute Adjudication Board (DB/DAB) is established in accordance with the Contract, when the Contract requires establishment of a standing DB/DAB. In case the Contract requires establishment of a DB/DAB on ad hoc basis as in the FIDIC Yellow Book, it is convenient for parties to agree to potential candidates for such DB/DAB at the commencement of the Contract. (Please refer to Procedure CA 25)
2. Upon establishment of the DB/DAB, the Chief Engineer shall coordinate with the Resident Engineer (Engineer's Assistant) and the Contractor to arrange the signing of tripartite DB/DAB agreement by DB/DAB members, representatives of the Employer and the Contractor.

3. The Chief Engineer shall coordinate with the Resident Engineer (Engineer's Assistant) to arrange the preliminary meeting and the first site visit of the DB/DAB in consultation with the Contractor.
4. The Project Director/Project Manager or his representative shall attend the preliminary meeting and the site visit of the DB/DAB to discuss and agree to procedural arrangements of the DB/DAB to ensure smooth functioning of the DB/DAB.
5. The Project Director/Project Manager or his representative shall ensure that reasonable time periods are allocated for submission of various pleadings/submissions when agreeing to a tentative time table for adjudication during the preliminary meeting.
6. The Chief Engineer shall ensure that Monthly Progress Reports are submitted to each DB/DAB member regularly for DB/DAB members to get acquainted themselves with the site activities and progress of the works.
7. The Chief Engineer shall ensure that each DB/DAB member is provided with a set of copies of the Contract Documents.
8. The Chief Engineer shall take necessary action to prevent issues, problems or claims on any matter relevant to the Contract, from becoming potential disputes by seeking advice/opinion of the DB/DAB, jointly with the Contractor.
9. In case a dispute is referred to the DB/DAB by the Contractor, the Project Director/Project Manager shall ensure that a proper response is submitted with a copy to the Contractor within the agreed time frame with adequate facts and evidence to support the Employer's position on the dispute, challenging/contesting/countering the allegations/arguments/assertions raised by the Contractor. Drafting of the response may require specialist assistance from Head Office or from an external consultant depending on the nature and type of the dispute and the Project Director/Project Manager shall decide the extent of external support required.
10. In case a dispute is to be referred to the DB/DAB on behalf of the Employer, the Project Director/Project Manager shall ensure that a proper referral of the dispute is prepared and submitted with a copy to the Contractor with adequate facts and evidence to support the Employer's position on the dispute. Drafting of the referral may require specialist assistance from Head Office or from an external consultant depending on the nature and type of the dispute and the Project Director/Project Manager shall decide the extent of external support required.
11. The Project Director/Project Manager shall ensure that a competent group of staff with adequate knowledge of issues at dispute participate in the DB/DAB hearing to defend the position of the Employer.
12. The Chief Engineer shall ensure that any information requested by the DB/DAB are promptly submitted to the DB/DAB with a copy to the Contractor.
13. If further submissions are allowed, the Project Director / Project Manager shall ensure that a proper submission to challenge/contest/counter any allegations /arguments/assertions raised by the Contractor subsequent to his referral of the dispute

to DB/DAB, is submitted to the DB/DAB with a copy to the Contractor within the time allowed.

14. When DB/DAB give its decision on the dispute, the Project Director/Project Manager shall ensure that said decision is thoroughly reviewed by a competent panel of persons and give their opinion on the reasonability and acceptability of such decision.
15. If the Project Director/Project Manager is of the view that the DB/DAB's decision is reasonable and acceptable, he shall forward his recommendation to Head of Entity seeking his approval to give effect to the DB/DAB's decision.
16. The Project Director/Project Manager shall ensure that the DB/DAB's decision is honoured upon obtaining Head of Entity's approval.
17. If the Project Director/Project Manager is of the view that the DB/DAB's decision is unreasonable and/or unacceptable, he shall forthwith send a Notice of Dissatisfaction to the Contractor within 28 days and seek the Head of Entity's advice on giving effect to the DB/DAB's decision.
18. Notice of Dissatisfaction shall state that it is given under the Sub-Clause 20.4, and shall set out the matter in dispute and the reason(s) for dissatisfaction.

REFERENCES

FIDIC Conditions of Contract MDB 2010

Sub-Clause 20.2 [Appointment of the Dispute Board]

Sub-Clause 20.4 [Obtaining Dispute Board's Decision]

ATTACHMENTS

Specimen Letters

SF/CA 67/ 01 – Referral of a Dispute to the DB/DAB by the Employer

SF/CA 67/ 02 – Response to a Referral of a Dispute to the DB/DAB by the Contractor

SF/CA 67/ 03 – Notice of Dissatisfaction

PROCEDURE NO.	CA 68		
PROCEDURE TITLE	Amicable Settlement		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to Amicable Settlement when parties fail to resolve their dispute through adjudication by a DB/DAB. Amicable Settlement is the second attempt in resolving a dispute through multi-tiered dispute resolution scheme incorporated under FIDIC and ICTAD forms of Contract when adjudication is not successful.

APPLICABILITY

This procedure is applicable to any Contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC (ICTAD based Conditions of Contract do not have any provisions for Amicable Settlement.)

ACTIONS REQUIRED

1. When a decision of the DB/DAB is not acceptable to the Employer, the Project Director/ Project Manager shall seek approval of the Head of the Entity to initiate Amicable Settlement upon giving Notice of Dissatisfaction.
2. The Project Director/ Project Manager shall make an assessment of the status of the dispute in consultation with the AG's Department and based on the above assessment Head of Entity shall decide as to whether pursuing an amicable settlement is desirable.
3. In the event it is decided to pursuing amicable settlement, a settlement proposal shall be submitted to the Standing Cabinet Appointed Review Committee (SCARC) for evaluation with following information:
 - a. Views of the Hon. Attorney General
 - b. Views of relevant Heads of Departments
4. Minister in charge of relevant subject shall appraise the Cabinet of Ministers to take an appropriate decision based on information compiled by the Secretary to the relevant line ministry.
5. Upon getting the approval from the Cabinet of Ministers, the Secretary of the line ministry shall take action to form an Amicable Settlement Committee to conduct negotiations for Amicable Settlement with the Contractor.
6. Relevant Authority shall appoint members of the Amicable Settlement Committee and they should be given authority to negotiate with the Contractor on behalf of the Employer.

7. Upon establishment of the Amicable Settlement Committee, the Chief Engineer shall prepare a brief report on the dispute and submit it together with all relevant documents/information including submissions to DB/DAB by both parties and the DB/DAB decision.
8. Prior to commence negotiations with the Contractor the Amicable Settlement Committee shall review/study all information available.
9. The Project Director/ Project Manager or Chief Engineer shall brief the Amicable Settlement Committee on the dispute and make clarifications on any matter which is not clear to the Amicable Settlement Committee.
10. The Amicable Settlement Committee shall negotiate with the Contractor and come to a settlement considering the adverse implications of resorting to arbitration, but not much compromising the Employers interests.
11. If it is possible to arrive at a settlement amicably, it should be recorded and signed by the representative of the Contractor and the members of the Amicable Settlement Committee on behalf of the Employer.
12. The Project Director/ Project Manager shall obtain approval of the Cabinet of Ministers, the Secretary of the line ministry or the Head of Entity (as the case may be) for the agreement reached by the Amicable Settlement Committee and the Contractor.
13. The Project Director/ Project Manager shall give effect to the agreement reached by the Amicable Settlement Committee and the Contractor upon negotiations.

REFERENCES

FIDIC Conditions of Contract MDB 2010
Sub-Clause 20.5 [Amicable Settlement]

Other Regulations/Directives

Cabinet Paper No. 11/0811/504/072 on Settlement of Disputes in Relation to Contract Management

ATTACHMENTS

Specimen Letters

SL/CA 68/ 01 – Letter to Attorney General Seeking His Opinion on the Matter in dispute
SL/CA 68/ 02 – Letter to Standing Cabinet Appointed Review Committee

Specimen Formats

SF/CA 68/ 01 – Format for Minutes of Amicable Settlement Committee Meeting

PROCEDURE NO.	CA 69		
PROCEDURE TITLE	Arbitration		
REVISION NO.	B	REVISION DATE	9 th September 2015

SCOPE

Scope of this procedure covers activities required to be carried out with regard to resolution of disputes through arbitration.⁵⁰

APPLICABILITY

This procedure is applicable to any Contract to be awarded based on Construction or Plant and Design-Built type Conditions of Contract by FIDIC or ICTAD

ACTIONS REQUIRED

1. Arbitration process is deemed to commence when one party receives a notice requiring that party to refer, or to concur in the reference of, the dispute to arbitration; or a notice requiring that party to appoint an arbitral tribunal or to join or concur in or approve the appointment of, an arbitral tribunal in relation to the dispute.
2. When the Employer receives a notice from the Contractor as above, the Project Director/Project Manager shall review provisions in the arbitration agreement, which is embedded within the Conditions of Contract, to find out following information:
 - a. Place of Arbitration
 - b. Whether arbitration is Institutional or ad hoc
 - c. Rules of arbitration
 - d. Number of Arbitrators
 - e. Method of appointing Arbitrators
 - f. Language of arbitration
 - g. Law of arbitration
3. During the arbitration process, the party who initiated the arbitration is called as the "Claimant" and the other party is called as the "Respondent".
4. When the arbitration agreements stipulates the appointment of a sole arbitrator, the Employer is required to agree to one of the candidates proposed by the Contractor or propose names of several candidates to the Contractor, for selection of a sole arbitrator. For this purpose, the Project Director/Project Manager shall short-list potential candidates from sources such as lists maintained by CIDA, ICLP and Institution of Engineers (IESL) and potential candidates shall possess adequate qualifications, relevant work experience, experience in arbitration and sound knowledge of Contract management. They also shall be independent, impartial and available. The Project Director/Project Manager may seek advice of the Attorney General's Department in selecting candidates for arbitral tribunals.

⁵⁰ Please refer Annex 2.

5. In the event of disagreement for proposed candidates, a party may request the institution stated in the arbitration agreement to appoint such sole arbitrator or if there is no such provision, parties may appoint a panel of three arbitrators, one each by the parties and the third arbitrator who will be the chairman of the arbitral tribunal, by the two arbitrators appointed by parties. When either party or the institution appointed to nominate arbitrators fails to appoint an arbitrator/s within sixty days after receiving the request, a party may request High Court to appoint arbitrator/s in accordance with Section 7 of the Arbitration Act No.11.
6. Upon appointment of the arbitral tribunal, the Project Director/Project Manager shall consult the Attorney General's Department to form an arbitration team to defend the interest of the Employer in the arbitration. The Project Director/Project Manager shall assign several competent engineers who possess an in depth knowledge regarding the issues at dispute, for the Arbitration Team. If the Project Director/Project Manager is of the view that in house capabilities are not adequate he may engage external experts to complement the composition of the Arbitration Team, subject to the approval of the GM.
7. The Project Director/Project Manager shall provide the Arbitration Team with required resources such office space, filing racks, computers, printers, copiers and fax machines
8. The Arbitration Team shall collect whatever information available to use as evidence to support the position of the Employer.
9. The Arbitration Team shall prepare for the preliminary procedural meeting within which procedural arrangements including time frame for various activities are discussed and agreed. The Arbitration Team shall request adequate time for submission of various statements in response to submissions by the Contractor. The Project Director/Project Manager and Team members shall participate in the preliminary procedural meeting while state counsels from AG's Department may appear on behalf of the Employer.
10. The Arbitration Team shall prepare admissions and issues in the arbitration and in consultation with the Contractor's team prepare a joint draft of admissions and issues base on admissions and issues prepared individually by both parties.
11. The Arbitration Team shall participate in any other procedural hearings and take any action directed by the tribunal through such hearings or procedural orders.
12. Upon submission of the Statement of Claim by the Contractor as the Claimant, the Arbitration Team shall assist the AG's Department to carefully review the Statement of Claim and draft the Statement of Defence on behalf of the Employer as the Respondent.
13. The Statement of Defence shall be submitted to the Arbitral Tribunal within the agreed time frame with copies to the Claimant and the Institution administering the arbitration.
14. Upon receiving the Statement of Reply from the Claimant in response to Statement of Defence, the Arbitration Team shall assist the AG's Department to carefully review the Statement of Reply and check whether there are any new issues and/or arguments included within it. If there are any new issues or/and arguments are included within the Statement of Reply, a request shall be submit to the Arbitral Tribunal for an opportunity

to counter such new issues or/and arguments through a Rejoinder. If the Arbitral Tribunal permits submission of a Rejoinder, the Arbitration Team shall assist the AG's Department to draft the Rejoinder.

15. The Rejoinder shall be submitted to the Arbitral Tribunal within the agreed time frame with copies to the Claimant and the Institution administering the arbitration.
16. The parties shall assist the Arbitral Tribunal in preparing a list of supporting documents involved in the arbitration under categories of admitted documents and disputed documents. Either party may request other party for documents not available to them but which are relevant to issues involved through discovery of documents.
17. The Arbitration Team shall identify potential witnesses of fact to support the Respondent's position and the Arbitration Team with the assistance of State Counsels help such witnesses to prepare "Witness Statements".
18. The Arbitration Team shall identify potential Expert Witnesses to support the Respondent's position and the Arbitration Team with the assistance of State Counsels help such Experts to prepare "Expert Reports".
19. The Arbitration Team, jointly with the Claimant, shall coordinate arrangements for the arbitration hearing, including venue, facilities, documents involved, refreshments and transcript writers.
20. The Arbitration Team shall assist State Counsels to prepare opening oral submission and prepare for cross examination of Claimant's witnesses of fact and expert witnesses based on their witness statements/expert reports.
21. The Arbitration Team shall assist State Counsels during the cross examination of Claimant's witnesses of fact and expert witnesses during the arbitration hearing.
22. The Arbitration Team shall assist State Counsels to review transcripts of the hearing and note important sections which can be used to support Respondent's position.
23. The Arbitration Team shall assist State Counsels to prepare closing oral submission.
24. The Arbitration Team shall assist State Counsels to prepare any other submissions as directed by the Arbitral Tribunal (such as cost of arbitration, taxes and interest).
25. The Arbitration Team shall assist State Counsels to prepare Final Submissions.
26. Upon receiving the arbitral award, The Arbitration Team shall assist State Counsels to review the arbitral award to find out any avenues to challenge the award and request the High Court to set aside the award if the same is not in the favour of the Respondent.
27. The Employer also can initiate arbitration by notifying the Contractor. In this scenario Employer will be called the "Claimant" and the Contractor will be called the "Respondent" and the process involved will be similar to above.

REFERENCES

Procurement Guidelines

Sub Section 5.4.14

Sub Section 5.4.15

Sub Section 5.4.16

Procurement Guide

Sub Section 5.4.14 of Supplement – 15 which superseded original content

FIDIC Conditions of Contract MDB 2010

Sub-Clause 20.6 [Arbitration]

ATTACHMENTS

Specimen Letters

SL/CA 69/01 – Notice of Arbitration

SL/CA 69/02 – Statement of Claim

SL/CA 69/03 –Statement of Defence

SL/CA 69/04 –Statement of Reply of the Claimant

SECTION 3

FORMS AND FORMATS
(Attachments to Procedures)

Attachments for Procedure CA/01

Checklist : CL/CA 01/ 01 – Pre-award Checklist

Pre-award Checklist

Contract Name :[Contract Name]

Contract No : [Contract No]

S/No	Activity	Status	Remarks
1.	Approval for the award of the contract is obtained from relevant authority (Cabinet of Ministers, Secretary of the line ministry or Project Director)	☐ OK ☐ Not OK ☐ Not Applicable	
2.	Clearance of the Attorney General is obtained for the finalized draft contract document.	☐ OK ☐ Not OK ☐ Not Applicable	
3.	Prior approval for the award of the contract is obtained from the funding agency/agencies	☐ OK ☐ Not OK ☐ Not Applicable	
4.	Approvals/clearances from regulatory authorities such as RDA, UDA, Irrigation Department and CEA are obtained.	☐ OK ☐ Not OK ☐ Not Applicable	
5.	All encumbrances are cleared and acquisitions of lands, possession of which are to be handed over to the contractor, are completed.	☐ OK ☐ Not OK ☐ Not Applicable	
6.	Financing arrangements have been made, adequate funds are available and disbursement mechanisms are in place and effective for making payments under the contract.	☐ OK ☐ Not OK ☐ Not Applicable	

Project Director/Project Manager

SPECIMEN LETTER : SL/CA 01/ 01 – LETTER OF ACCEPTANCE/AWARD

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Letter of Acceptance

1. We refer to your bid dated [Date] for execution of [Contract name and number] and the attached Memorandum of Understanding (MOU) which contained subsequent agreements reached between us, resulting an amendment to your bid price.
2. We wish to inform you that your bid, as corrected and modified in accordance with the Instructions to Bidders and above referred MOU, for a sum of (currency) [Amount in figures](currency) [Amount in letters]), including an amount of US\$ [Amount in figures] (currency) [Amount in letters]) as contingencies, defined as the Accepted Contract Amount (exclusive of VAT) payable for the execution and completion of Works and the remedying of any defects therein in accordance with the provisions of the Contract, is hereby accepted.
3. In addition to the said Accepted Contract Price, a sum of LKR [Amount in figures](LKR [Amount in letters]) is allocated under this Contract for meeting your obligations to pay VAT and Custom duties for Goods to be imported under this Contract.
4. Payment of all other taxes including company taxes and personnel taxes of Contractors' staff, except VAT, custom duties and NBT (if applicable), shall be the responsibility of the Contractor.
5. VAT applicable under this Contract will be paid separately upon production of a Tax Invoice. VAT registration number of the [Name of the organization] is [VAT registration number]
6. Pending the signing of a formal Contract Agreement, your amended bid together with the said MOU and this Letter of Acceptance with the attachments shall form a binding Contract between us.
7. You are required to enter into a contract agreement with us within 28 days after you receive this Letter of Acceptance and please find enclosed the draft contract agreement for your perusal.
8. The following documents shall be deemed forming the Contract and the priority of the documents shall be in accordance with the given sequence:

- a. Contract Agreement (when signed)
- b. This Letter of Acceptance
- c. Memoranda of Understanding (if any)
- d. All Minutes of Negotiation meetings and correspondence between parties relevant to negotiations, among which latest having higher priority
- e. Letter of Tender
- f. Addenda
- g. Particular Conditions of Contract [– Part A]
- h. [Particular Conditions of Contract – Part B]
- i. General Conditions of Contract
- j. Specifications/[Employer's Requirements]
- k. Drawings
- l. Bill of Quantities/ Schedules
- m. Contractor's Proposal and any other documents forming part of the Contract.
- n. Supplementary Information

9. Commencement Date of this Contract shall be considered as [date].
10. Time for Completion of this Contract is [Number of Months] months calculated from the Commencement Date.
11. The Employer will pay you an amount equal to [Percentage of the Advance Payment] of the Accepted Contract Amount as an advance payment within [No. of days] after receiving the Advance Payment Guarantee in accordance with the terms of the Contract.
12. You are hereby requested to obtain the Insurances required under the Contract, provide receipts for payment of the premiums and produce the original policies for our verification along with a certified copy for our retention within [No. of days] days of the receipt of this Letter of Acceptance.
13. You are also requested to submit a Power of Attorney, acceptable to us, of the authorized representative of yours for the Project as required by the Contract.
14. The Contract Number allocated to this Contract is [Contract Number], which should be quoted in all future correspondence in reference to the Contract.
15. You are required to provide a Performance Security within 28 days of the receipt of this Letter of Acceptance, in accordance with Sub-Clause ..of the Conditions of Contract, in the form of a on demand Bank Guarantee issued by an acceptable bank in accordance with the terms of the Contract.
16. All correspondence with the Employer shall be addressed to the Project Director, [Project Name], **[Name of the Employer]**, [Address of the Project office]
17. The “Engineer” for the Contract is Eng. [Head of the Entity's name], Head of the Entity, **[Name of the Employer] [Address of the Employer]**
18. Please acknowledge and advise the date of receipt of this letter.

Thanking you.

Yours faithfully,

[Name of the – (as the case may be)]

[Chairman/Head of the Entity/Project Director]
[Name of the Employer]

Enclosed : Draft Contract Agreement

cc:

1. Secretary, **[Name of the line ministry]** /Chairman, Procurement Committee
2. Chairman, **[Name of the Employer]**
3. Head of the Entity**[Name of the Employer]**
4. Project Director
5. **[Funding Agency]**
6. Director (.....) ,ERD
7. Director General of Public Finance, General Treasury
8. Director General, External Resources Department
9. CIDA
10. Auditor General
11. Commissioner General of Inland Revenue

Attachments for Procedure CA/02

SAMPLE FORMAT : SF/CA 02/ 01 – IDENTIFICATION OF KEY STAFF REQUIREMENTS

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Designation	No. Required	No. Available In-house	Potential In-house Candidates Identified		No. to be Recruit- ed	Remarks
				Name	Project		
1.	Project Managers						
2.	Chief Engineers						
3.	Senior Engineers						
4.	Engineers						
5.	Quantity Surveyors						
6.	Engineering Assistants						
7.	Technical Officers						

Project Director/Project Manager

SL/CA 02/ 01 – LETTER TO HOD REQUESTING RELEASE OF IN-HOUSE STAFF

[Letter Reference No.]

[Date]

GM/DG

[Name of the Organization]

[Contract Name]

Contract No. [Contract No]

Subject: Request to Release Staff for Project Works

I have assessed that qualified and competent persons for following positions are required for this project as mobilization of certain contracts under this project are expected within next few months:

S/No.	Position	No. Required	Remarks

Upon my inquiry, I have identified that following in-house candidates are available to be engaged, as their current projects are nearing completion.

S/No.	Name	Position	Current Project	Date on which services are required

I appreciate if you could make arrangements to release above persons for this project.

Also I appreciate if you could make arrangements to recruit suitable persons for following positions in this project on contract basis, in accordance with Management Services Circular No. 33 of 2007 and its subsequent amendments, as suitable persons to fill such positions are not available within in-house staff.

S/No.	Position	No. Required	Date on which services are required	Remarks

Thanking you.

Yours faithfully,

[Name of the PD]

Project Director

[The Public Entity]

cc: 1. [Chairman], [the organization]
2. [funding Agency]

Attachments for Procedure CA/03

CL/CA 03/ 01 – CHECKLIST FOR TAKING OVER OF DOCUMENTS/INFORMATION

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No	Activity	Status	Remarks
1.	Feasibility Study Reports	☐ Available ☐ Not Available ☐ Not Applicable	
2.	Environmental Impact Assessment Reports	☐ Available ☐ Not Available ☐ Not Applicable	
3.	Resettlement Action Plans and information on land acquisition.	☐ Available ☐ Not Available ☐ Not Applicable	
4.	Letters from authorities giving approval for the project	☐ Available ☐ Not Available ☐ Not Applicable	
5.	Loan Agreements with funding Agencies	☐ Available ☐ Not Available ☐ Not Applicable	
6.	Survey plans	☐ Available ☐ Not Available ☐ Not Applicable	
7.	Hydrological/drainage reports	☐ Available ☐ Not Available ☐ Not Applicable	
8.	Rainfall records for the project area	☐ Available ☐ Not Available ☐ Not Applicable	
9.	Coastal Hydraulic Reports and model study reports	☐ Available ☐ Not Available ☐ Not Applicable	

10.	Soil investigation logs and reports	☐ Available ☐ Not Available ☐ Not Applicable	
11.	Material Testing reports	☐ Available ☐ Not Available ☐ Not Applicable	
12.	As built information/drawings of previous constructions in same area including GIS	☐ Available ☐ Not Available ☐ Not Applicable	
13.	Information on utility positions in the area including GIS	☐ Available ☐ Not Available ☐ Not Applicable	
14.	Design Reports and design drawings	☐ Available ☐ Not Available ☐ Not Applicable	
15.	Bidding documents	☐ Available ☐ Not Available ☐ Not Applicable	
16.	Record/minutes of pre-bid meeting and visit	☐ Available ☐ Not Available ☐ Not Applicable	
17.	Tender/bid clarifications and responses	☐ Available ☐ Not Available ☐ Not Applicable	
18.	Addendums	☐ Available ☐ Not Available ☐ Not Applicable	
19.	Tenders/ bids submitted with attachments	☐ Available ☐ Not Available ☐ Not Applicable	
20.	Minutes of negotiation meetings	☐ Available ☐ Not Available ☐ Not Applicable	
21.	TEC and CAPC/MPC/PPC reports.	☐ Available ☐ Not Available ☐ Not Applicable	

22.	Cabinet Memoranda and decisions of Cabinet of Ministers approving the award	☐ Available ☐ Not Available ☐ Not Applicable	
23.	Letter of Acceptance/Award	☐ Available ☐ Not Available ☐ Not Applicable	
24.	Project Management Guide	☐ Available ☐ Not Available ☐ Not Applicable	
		☐ Available ☐ Not Available ☐ Not Applicable	
		☐ Available ☐ Not Available ☐ Not Applicable	

Project Director/Project Manager

SF/CA 03/ 01 – FORMAT FOR DOCUMENT INVENTORY

Serial No.	Description	Type (Original/copy)	Location

Attachments for Procedure CA/04

SL/CA 04/ 01 – MEMO TO STAFF ON SPECIFIC PROVISIONS AND AMBIGUITIES IN CONTRACT DOCUMENTS

[Name of the Organization]

[Name of the Project]

Memo Reference No.[Memo Reference No.]

[Date]

[Contract Name]

Contract No. [Contract No]

Subject: Important/Specific Provisions and Ambiguities/ Discrepancies in the Contract Documents

MEMO

To All Project Staff

Please find below certain important provisions which are specific to the captioned contract:

S/No.	Document	Reference	Provision
1.	Particular Conditions of Contract	Sub-Clause 14.1	
2.			

Please find below some ambiguities/ discrepancies between different documents forming the contract, which were identified during the review of contract documents. Please note that the contractual interpretations/positions for such ambiguities/ discrepancies are stated against each of them in the table.

S/No.	Documents	Reference	Contractual Interpretation/Position
1.	Particular Conditions of Contract	Sub-Clause	Appendix to the Bid shall prevail over the Particular Conditions of Contract
	Appendix to the Bid	Sub-Clause	

SPECIMEN LETTER : SL/CA 04/ 02 – ENGINEER’S INSTRUCTION TO CLARIFY AMBIGUITIES/DISCREPANCIES

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Engineer's Instruction to Clarify Ambiguities/Discrepancies between Documents Forming the Contract

We wish to inform you that upon our review of Contract Documents, we have identified following ambiguities/ discrepancies between documents forming the Contract:

- 1.
- 2.

Accordingly, we hereby instruct you our position with regard to above ambiguities/ discrepancies, in accordance with the Sub-Clause 1.5 of the Conditions of Contract, as follows:

- 1.
- 2.

Thanking you.

Yours faithfully,

[Engineer/Team Leader]
[the Public Entity]

cc:Project Director

Attachments for Procedure CA/05

CHECKLIST : CL/CA 05/ 01 – PRE-CONTRACT CHECKLIST

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status	Remarks
1.	Letter of Acceptance/Award has been sent to the Contractor together with the draft Contract Agreement	☐ OK ☐ Not OK ☐ Not Applicable	
2.	Contractor's bid remain valid	☐ OK ☐ Not OK ☐ Not Applicable	
3.	Clearance of the Attorney General is obtained for the draft contract agreement.	OK	

		☐ Not OK ☐ Not Applicable	
4.	Power of Attorney for the signatory who is authorized to sign on behalf of the Contractor is obtained and verified to be valid	☐ OK ☐ Not OK ☐ Not Applicable	
5.	Information on venue and time for signing the Contract Agreement has been informed to the Contractor, Chairman/THE ENTITY and the Board Member	☐ OK ☐ Not OK ☐ Not Applicable	

Project Director/Project Manager

SPECIMEN: SL/CA 05/ 01 – CONTRACT AGREEMENT

THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST
 REPUBLIC OF SRI LANKA
 [NAME OF THE ENTITY]
 [NAME OF THE CONTRACT]
 [CONTRACT NO.]
 CONTRACT AGREEMENT

This Contract Agreement is made on the [day of the month]day of [Month and Year] between the [Name of the Employer], established under the [Act/Law which established the Employer] having its head office at [Address of the Employer] (hereinafter called “the Employer” which term means and includes the said [Name of the Employer], its successors and assigns) on the one part, and [Contractor’s name], a company duly incorporated in [Contractor’s country], having its principal office at [Contractor’s HO address] (hereinafter called “ the Contractor” which term means and includes the said [Contractor’s name], its successors and assigns) on the other part.

WHEREAS the Employer is desirous that Works with regard to [Contract name], should be executed by the Contractor and has accepted a Tender submitted by the Contractor for the [designing,] execution and completion of such Works and the remedying of any defects therein, in accordance with the provisions of the Contract.

Now this Agreement Witnesseth as follows:

1. In this Agreement works 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 construed as part of this Agreement:
 - a. The Letter of Acceptance dated
 - b. The Memorandum of Understanding dated

- c. Minutes of Negotiation meetings and correspondence between parties relevant to negotiations, among which latest having higher priority
- d. The Letter of Tender dated
- e. The Addenda nos. ...
- f. The Particular Conditions of Contract [– Part A]
- g. [The Particular Conditions of Contract – Part B]
- h. The General Conditions of Contract
- i. The Specifications/[Employer's Requirements]
- j. The Drawings
- k. The completed Bill of Quantities/ Schedules
- l. The Contractor's Proposal and any other documents forming part of the Contract.
- m. Supplementary Information

The priority of above documents shall be in accordance with the given sequence, item a. having the highest priority after this Contract Agreement.

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 [design,] execute and complete the Works and remedy any defects therein, in conformity, in all respects, with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the [designing,] execution and completion of the Works and the remedying of any defects therein, the Contract Price, (currency) [Accepted Contract Amount in figures] (US dollars [Accepted Contract Amount in letters]) or such other sum as may become payable under the provisions of the Contract and in the manner prescribed by the Contract. VAT is not included within the Accepted Contract Amount and such costs shall be paid by the Employer separately to the Contractor upon submission of tax invoices.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day, month and year first before written.

Signed by [Name of the Chairman], Chairman and [Name of the Board Member] Board Member on the part of the said [Name of the Employer] at [Place at which contract is to be signed], in the presence of the following witnesses.

..... [Name of the Chairman]	 [Name of the Board Member]
Chairman/[Name of the Employer]	Board Member/[Name of the Employer]

FOR [Name of the Employer]

Witnesses:	
01. Signature:.....	02. Signature:.....

Name:.....

Name:.....

Address:.....	Address:.....
------------------------	------------------------

Signed by [Name of the authorized signatory of the Contractor] in the capacity of authorized signatory for the said [Contractor's name] at [Place of signing], in the presence of the following witnesses.

.....

.....

FOR [Contractor's name]

Witnesses:	
01. Signature:.....	02. Signature:.....
Name:.....	Name:.....
Address:.....	Address:.....
.....	

Attachments for Procedure CA/06

CL/ CA 06/ 01 – CHECKLIST TO ASSIGN SCOPE OF SELF READING FOR ORIENTATION TRAINING

Contract Name : [Contract Name]
Contract No : [Contract No]
Trainee's Name :

S/No.	Procedure		Time Frame	
			To	From
1.		☐		
2.		☐		
3.		☐		
4.		☐		

.....
Project Director/Project Manager

SF/CA 06/ 01 – Training Record

Training Record**Contract Name** : [Contract Name]**Contract No** : [Contract No]**Employee's Name** :

S/No.	Description of Training	From	To	PD's/PM's Certification
1.				
2.				

SF/CA 06/ 02 – TRAINING EVALUATION FORM**Contract Name** : [Contract Name]**Contract No** : [Contract No]**Employee's Name** :**Description of Training:**

S/No.	Activity	Status	Remarks
1.	Relevance of the training received to your current work assignment	☐ Very Relevant ☐ Relevant ☐ Slightly Relevant ☐ Not Relevant at all	
2.	Quality of Resource Person	☐ Excellent ☐ Very Good ☐ Good ☐ Not Bad ☐ Poor	
3.	Quality of Presentation	☐ Excellent ☐ Very Good ☐ Good ☐ Not Bad ☐ Poor	
4.	Quality of Handouts	☐ Excellent ☐ Very Good ☐ Good ☐ Not Bad ☐ Poor	

5.	Quality of the Venue	☐ Excellent ☐ Very Good ☐ Good ☐ Not Bad ☐ Poor	
6	Quality of the Food/Refreshment	☐ Excellent ☐ Very Good ☐ Good ☐ Not Bad ☐ Poor	
7.	Has the training provided enhance your knowledge and improved your competence in Contract Management	☐ Excessively ☐ Significantly ☐ Moderately ☐ Slightly ☐ Not at all	
8.	Do you have any other comments with regard to the content of the training or manner in which the training was conducted?		
9.	Do you have any suggestions for improvement of the training program in future?		

Signature of the Trainee

Attachments for Procedure CA/07

CL/CA 07/ 01 – PRE-COMMENCEMENT CHECKLIST

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status	Remarks
1.	Contract has been signed	☐ OK ☐ Not OK ☐ Not Applicable	
2.	The Contractor has been provided with evidence of financial arrangements	☐ OK ☐ Not OK ☐ Not Applicable	

3.	The Contractor has been provided with effective access to and possession of the Site	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
4.	Advance payment or its first installment has been paid	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
5.	The Engineer and/or his assistants has been provided with copies of all relevant documentation, including all contract documentation and drawings	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
6.	The Contractor has been provided with detailed information on survey control points including grid points and benchmarks	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
7.	Approval for the Contractor's proposed locations for site offices and facilities such as batching plants and stock yards.	☐	OK	
		☐	Not OK	
		☐	Not Applicable	

Project Director/Project Manager

SPECIMEN LETTER : SL/CA 07/ 01 – INSTRUCTION TO COMMENCE WORKS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Instruction to Commence Works

1. We refer to the Letter of Acceptance dated **[Date of Letter of Acceptance]**, receipt of which has been acknowledge by your letter dated **[Date]**.
2. We hereby notify you of the Engineer's recording of agreement of both Parties on fulfillment of precedent conditions (a) to (d) stated under the Sub-Clause 8.1 of the Conditions of Contract.
3. Accordingly we hereby instruct you to commence works with effect from **[Date]**, in accordance with the provisions of Sub-Clause 8.1 of the Conditions of Contract.
4. Please acknowledge and advise the date of receipt of this letter.

Thanking you.

Yours faithfully,

[Name of the GM/Consultant as the case may be]
[Head of the Entity/Team Leader]

cc:

1. Secretary, [line ministry]/Chairman, Procurement Committee
2. [Chairman,[the Entity]
3. [Head of the Entity
4. [Project Director]
5. [Team Leader, Supervision Consultants]
6. [Funding Agency]
7. Director (.....) ,ERD
8. Director General of Public Finance, General Treasury
9. Director General, External Resources Department
10. Auditor General
11. Commissioner General of Inland Revenue

Attachments for Procedure CA/08

CL/CA 08/ 01 – CHECKLIST FOR EMPLOYER’S FINANCIAL ARRANGEMENTS

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status		Remarks
1.	Financing agreement with the funding agency is signed	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
2.	Allocations to fund local component of the contract price is arranged	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
3.	Loan effectiveness is established	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
4.	Disbursement mechanisms established	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
5.	Reasonable evidence of the Employer’s Financial arrangements submitted to the Contractor	☐	OK	
		☐	Not OK	
		☐	Not Applicable	

Project Director/Project Manager

**SL/CA 08/ 01 – LETTER TO THE CONTRACTOR INFORMING EMPLOYERS
FINANCIAL ARRANGEMENTS**

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Evidence of Employer's Financial Arrangements

We refer to the Letter of Acceptance dated **[Date of Letter of Acceptance]**.

Please find enclosed following documents as evidence of Employer's financial arrangements in accordance with the Sub-Clause 2.4 of General Conditions of Contract.

1. Loan Agreement dated **[Date]**
- 2.
- 3.

Thanking you.

Yours faithfully,

[Name of the Project Director]

Project Director

[the Entity]

cc:

1. [Chairman of the Entity]
2. [Head of the Entity, [the Entity]
3. [Project Director]
4. [Team Leader, Supervision Consultants]
5. [Funding Agency]

Attachments for Procedure CA/09

SL/CA 09/ 01 – LETTER APPOINTING THE ENGINEER

[Letter Reference No.]

[Date]

[Name of the Engineer]

[Address of the Engineer]

[Contract Name]

[Contract No]

Subject: Appointment of the Engineer

We hereby appoint you as the Engineer for the captioned contract in accordance with the Sub-Clause 3.1 of the Conditions of Contract.

Accordingly we hereby advise you to commence your services with immediate effect in accordance with the provisions of the Contract.

Please acknowledge and advise the date of receipt of this letter.

Thanking you.
Yours faithfully,

Head of the Entity

cc:

1. Secretary, [line ministry]/Chairman, Procurement Committee
2. [Chairman, [the Entity]
3. [Project Director]
4. [Funding Agency]

SL/CA 09/ 02 – LETTER NOTIFYING THE APPOINTMENT OF THE ENGINEER

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Appointment of the Engineer

We hereby notify you that M/S **[Name of the Engineer]** has been appointed as the Engineer for the captioned contract in accordance with the Sub-Clause 3.1 of the Conditions of Contract.

Also please note that M/S **[Name of the Engineer]** has appointed **[Name of the Authorized Person]** as their Authorized Person for this Contract.

Accordingly we hereby advise you to communicate with the Engineer and take instructions from him in accordance with the provisions of the Contract.

Engineer's contact details are as follows:

Address:

Telephone No.:

Fax No.:

Email Address:

Please acknowledge and advise the date of receipt of this letter.

Thanking you.
Yours faithfully,
[Name of the GM]
Head of the Entity

cc:

1. Secretary, My of WS&D/Chairman, Procurement Committee
2. [Chairman[the Entity]
3. Addl. GM- [the Entity]
4. [Project Director]
5. [Funding Agency]

SL/CA 09/03 – LETTER NOTIFYING THE INTENDED REPLACEMENT OF THE ENGINEER

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Notification of Intention to Replace the Engineer

We hereby notify you of our intention to replace the incumbent Engineer M/S [Name of the Engineer] with M/S [Name of the intended replacement Engineer] as the Engineer for the captioned contract in accordance with the Sub-Clause 3.4 of the Conditions of Contract. Please find enclosed profile of the [Name of the intended replacement Engineer] together with his experience and other particulars for your information

Intended Replacement Engineer's contact details are as follows:

Address:

Telephone No.:

Fax No.:

Email Address:

Please acknowledge the receipt of this letter.

Thanking you.

Yours faithfully,
Head of the Entity

cc:

1. Secretary, [line ministry]/Chairman, Procurement Committee
2. [Chairman, [Entity]
3. [Project Director]
4. [Funding Agency]

SL/CA 09/ 03 – LETTER NOTIFYING THE APPOINTMENT OF REPLACEMENT ENGINEER

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Appointment of the Replacement Engineer

We hereby notify you of appointment of M/S. [Name of the replacement Engineer] as the Engineer for the captioned contract replacing the incumbent Engineer M/S [Name of the Engineer] with effect from [Date], in accordance with the Sub-Clause 3.4 of the Conditions of Contract.

Please note that the incumbent Engineer M/S [Name of the Engineer] will be ceased to function as the Engineer for this Contract with effect from the same date.

Also please note that M/S [Name of the replacement Engineer] has appointed [Name of the Authorized Person] as their Authorized Person for this Contract.

Replacement Engineer's contact details are as follows:

Address:

Telephone No.:

Fax No.:

Email Address:

Please acknowledge the receipt of this letter.

Thanking you.

Yours faithfully,

Head of the Entity

cc:

1. Secretary, [line ministry]/Chairman, Procurement Committee
2. [Chairman
3. [Project Director]
4. [Funding Agency]

Attachments for Procedure CA/010

SL/CA 010/ 01 – LETTER OF APPOINTMENT OF ENGINEER'S REPRESENTATIVE

[Letter Reference No.]

[Date]

[Name of the Engineer's Assistant]

[Contract Name]

[Contract No]

Subject: Appointment of the Engineer's Assistants

We hereby appoint you as a [Position] for the captioned contract in accordance with the Sub-Clause 3.2 of the Conditions of Contract.

Accordingly we hereby advise you to commence your services with immediate effect in accordance with the provisions of the Contract.

Thanking you.
Yours faithfully,
Head of the Entity

cc:

5. Project Director
6. The Contractor

SL/CA 010/ 02 – LETTER TO ASSIGN DUTIES AND DELEGATE AUTHORITIES TO ENGINEER'S ASSISTANTS

[LETTER REFERENCE NO.]

[DATE]

[Name of the Resident Engineer]

[Contract Name]

[Contract No]

Subject: Assign Duties and Delegate Authorities to the Resident Engineer

We hereby assign you following duties and delegate following authorities to you with regard to the captioned contract in accordance with the Sub-Clause 3.2 of the Conditions of Contract:

-
- 1 Monitor progress.
 - 2 Clarify technical requirements and draft supplementary drawings, site sketches, and site instructions as required.
 - 3 Supervise survey teams in checking the Contractor's setting out and the accuracy of line, level, and dimensions after construction.
 - 4 Quality control and approval of works in progress, in liaison with Materials Engineer, including signing "Work Approval Sheets", checking manufacturer's test certificates, advising the Engineer's Representative of the rejection of materials and workmanship, and checking remedial works.
 - 5 Monitor safety and security of the Works.
 - 6 Check Contractor's temporary works and method statements.
 - 7 Monitor compliance with environmental requirements.
 - 8 Agree Contractor's Day works sheets
 - 9 Supervise measurement of the Works.
 - 10 Advise on and draft day works orders, provisional sum orders, and variation orders for the approval of the Engineer.
-

- 11 Immediately advise the Engineer of claims / contractual disputes and ensure that contemporary records are maintained of all events which might affect the outcome. All "time and materials" sheets to be signed "without prejudice"
- 12 Immediately advise the Engineer of any accidents or emergencies and recommend action.
- 13 Attend Site meetings when required to do so.
- 14 Assist in co-ordination with local authorities and the police, and public relations.
- 15 Maintain site diaries and site records including the preparation of Daily Reports
- 16 Provide direct on-the-job training in construction supervision to their local counterpart and draft input to Training Reports for the Employer.
- 17 Assist in the preparation of the Monthly Contract Administration Report to the Employer.
- 18 Carry out inspections for Taking-Over the Works.
- 19 Check Contractor(s)' working and "as built" drawings.

Accordingly we hereby advise you to carry out above duties assigned to you in accordance with the provisions of the Contract.

Thanking you.
Yours faithfully,
Head of the Entity

cc:

1. Project Director
2. The Contractor

SL/CA 010/ 03 – LETTER TO REVOKE AUTHORITIES DELEGATED TO ENGINEER'S ASSISTANTS

[Letter Reference No.]

[Date]

[Name of the Engineer's Assistant]

[Contract Name]

[Contract No]

Subject: Revocation of Authority Delegated to Engineer's Assistants

We hereby revoke duties assign to you and authority delegated to you as a **[Position]** for the captioned contract in accordance with the Sub-Clause 3.2 of the Conditions of Contract.

Accordingly we hereby advise you not to engage in any activity involving the captioned contract with immediate effect in accordance with the provisions of the Contract.

Thanking you.

Yours faithfully

Head of the Entity

cc:

1. Project Director
2. The Contractor

Attachments for Procedure CA/11

SF/CA 11/ 01 –OUTGOING CORRESPONDENCE REGISTER

Contract Name :[Contract Name]

Contract No : [Contract No]

S/ No.	Letter Reference No.	Date	Subject	Addressee	Originator	Signed by	Response Received	
							Ref. No.	Date
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

SF/CA 11/ 02 – INCOMING CORRESPONDENCE REGISTER

Contract Name : [Contract Name]

Contract No : [Contract No]

S/ No.	Letter Reference No.	Date	Subject	From	File	Assigned to	Response Sent	
							Ref. No.	Date
1.								
2.								
3.								

Attachments for Procedure CA/12

CL/CA 12/ 01 – CHECKLIST FOR HANDING OVER OF POSSESSION OF THE SITE TO THE CONTRACTOR

Contract Name: [Contract Name]

Contract No :[Contract No]

S/No	Activity	Status	Remarks
1.		☐ OK ☐ Not OK ☐ Not Applicable	
2.		☐ OK ☐ Not OK ☐ Not Applicable	
3.		☐ OK ☐ Not OK ☐ Not Applicable	
4.		☐ OK ☐ Not OK ☐ Not Applicable	
5.		☐ OK ☐ Not OK ☐ Not Applicable	
6.		☐ OK ☐ Not OK ☐ Not Applicable	

.....
Project Director/Project Manager

SF/CA 12/ 01 – RECORD OF HANDING OVER OF POSSESSION OF THE SITE TO THE CONTRACTOR

Name of the Project :	
Section/ Part of the Works:	
Date of Handing over:	
Remarks:	
It is hereby confirmed that possession of the site for above mentioned Sections/ Parts of the Works have been handed over to the Contractor.	
Employer's Representative	Contractor's Representative
Signature:	Signature:
Position:	Position:
Engineer's Representative	
Signature:	
Position:	

Attachments for Procedure CA/13

**SL/CA 13/ 01 – LETTER TO THE CONTRACTOR FOR HANDING OVER OF SURVEY
CONTROL POINTS AND BENCH MARKS**

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Handing Over of Survey Control Points and Bench Marks

We wish to inform you that we intend to hand over Survey Control Points and Bench Marks which are required for setting out and level/position controlling of Works in this Contract.

Accordingly, we hereby advise you to arrange your surveyor on [Date] to take over such Survey Control Points and Bench Marks from our surveyor [Name of the Surveyor]. You may contact our surveyor at telephone number [telephone number] for necessary arrangements.

Thanking you.

Yours faithfully,

Engineer

Enclosed : Form SF/CA 13/ 01 – Handing Over of Survey Control Points and Bench Marks

cc: 1, Project Director

SF/CA 13/ 01 – HANDING OVER OF SURVEY CONTROL POINTS AND BENCH MARKS

Following Survey Control Points have been handed over to the Contractor's Surveyor on
[Date of handing over]:

S/No.	Reference No.	Coordinates		Remarks
		N	E	

Following Bench Marks have been handed over to the Contractor's Surveyor:

S/No.	Reference No.	Reference Level (MSL)	Remarks

.....
Handed Over by
[Name of the Engineer's Surveyor]
On behalf of the Engineer

.....
Taken Over by
[Name of the Contractor's Surveyor]
On behalf of the Contractor

Attachments for Procedure CA/14

CL/CA 014/ 01 – KICK-OFF MEETING CHECKLIST

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status	Remarks
1.	Project Director/Project Manager has fixed the date for the meeting	☐ OK ☐ Not OK ☐ Not Applicable	
2.	Venue, facilities and refreshment have been arranged	☐ OK ☐ Not OK ☐ Not Applicable	
3.	List of participants for the meeting has been finalized	☐ OK ☐ Not OK ☐ Not Applicable	
4.	Invitation letters have been sent to all participants	☐ OK ☐ Not OK ☐ Not Applicable	
5.	Presentations on the project has been developed	☐ OK ☐ Not OK ☐ Not Applicable	

Project Director/Project Manager

SL/CA 014/ 01 – INVITATION LETTER FOR THE KICK-OFF MEETING

[Letter Reference No.]

[Date]

[Name of the Participant]

[Address of the Participant]

[Contract Name]

[Contract No]

Subject: Kick-off Meeting

We wish to invite you for the kick-off meeting for the captioned contract which will be held at [Venue of the meeting] on [Date of the meeting] at [Time of the meeting]. Your participation in this kick-off meeting is appreciated.

Thanking you.

Yours faithfully,

[Name of the Project Director / Project Manager as the case may be]

[Project Director / Project Manager]

Enclosed : Agenda for the Kick-off meeting

cc:

1. Secretary, [Line Ministry] Chairman, Procurement Committee
2. [Chairman]
3. [Head of the Entity]
4. HoD
5. [Project Director]
6. [Funding Agency]

SF/CA 014/ 01 – AGENDA FOR THE KICK-OFF MEETING

Contract:		
Contract No.:		
Venue:		
Date:		
Time:		
AGENDA		
S/No.	Time	Item
		Welcome and Introductions
		Meeting Purpose
		Project Overview
		Project Background and Purpose
		Project Objectives
		Project Scope & Schedule
		Roles & Responsibilities of Team Members
		Project status
		Project Schedule
		Discussion on Potential issues
		Discussion on contractual obligations of parties during initial stage
		Discussion on establishing various mechanisms/procedures
		Follow up actions
		Other Business
		Summary
		Close

Project Director/Project Manager

SF/CA 014/ 02 – ATTENDANCE RECORD FOR THE KICK-OFF MEETING

S/No.	Name	Designation	Organization	Contact Telephone No.	Email Address

SF/CA 014/ 03 – MINUTES OF THE KICK-OFF MEETING

[Contract Name]

[Contract No]

Present

S/No.	Name	Designation	Organization

Absent with Apologies

S/No.	Name	Designation	Organization

S/No.	Matters Discussed	Action
	<u>General</u>	
1.	The Project Director (PD) chaired the meeting and he opened the meeting by welcoming all participants.	
2.	Self introduction of all participants was carried out on the request of the PD	
3.	It was agreed that design changes to the foundation of treatment plant will be provided to the Contractor within two weeks	by Chief Engineer on or before 12 th August 2014
	Since there was no further business, PD thanked all participants and declared the meeting closed.	

Vetted by

Approved by

.....
Chief Engineer

.....
Project Director

Attachments for Procedure CA/15

SPECIMEN LETTER : SL/CA 15/ 01 – COMMUNICATION DETAILS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Communication Details

We wish to inform you that following are the Contact information which should be use for communication of all contractual correspondences relevant to this Contract:

Postal Address:

Telephone Number:

Facsimile Number:

Email Address:

Thanking you.

Yours faithfully,

Project Director

cc:

1. Head of the Entity
2. [Team Leader, Supervision Consultants]

Attachments for Procedure CA/16

CL/CA 16/ 01 – CHECKLIST FOR OBTAINING AUTHORITY APPROVALS

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status	Remarks
1.		☐ OK ☐ Not OK ☐ Not Applicable	
2.		☐ OK ☐ Not OK ☐ Not Applicable	

3.		☐	OK	
		☐	Not OK	
		☐	Not Applicable	
4.		☐	OK	
		☐	Not OK	
		☐	Not Applicable	
5.		☐	OK	
		☐	Not OK	
		☐	Not Applicable	
6.		☐	OK	
		☐	Not OK	
		☐	Not Applicable	

Project Director/Project Manager

Attachments for Procedure CA/17

CL/CA 17/ 01 – CHECKLIST FOR REVIEWING OF WORK PROGRAM

Contract Name :[Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status		Remarks
1.	Dedicated activities and milestones are allocated to all major work items and major events	☐	OK	
		☐	Not OK	
2.	Time durations allocated for each activity is reasonable and realistic.	☐	OK	
		☐	Not OK	
3.	All activities and milestones are connected with appropriate logics representing desired relationship and sequence.	☐	OK	
		☐	Not OK	
4.	Resources and costs are allocated.	☐	OK	
		☐	Not OK	
5.	Appropriate calendars are defined and used to represent work week and non-working days.	☐	OK	
		☐	Not OK	
6.	In-appropriate constrains are introduced to restrict/manipulate the rearrangement of activities when the program is updated.	☐	OK	
		☐	Not OK	
7.	Contractual milestones and completion dates are met.	☐	OK	
		☐	Not OK	
8.	Interfaces with other contracts and events/activities are defined.	☐	OK	
		☐	Not OK	
9.	Critical Path is well defined.	☐	OK	
		☐	Not OK	

10.	Formatting of the output is acceptable	☐	OK	
		☐	Not OK	
11.	Work sequence and activities defined are accordance with the Contractor's method of working	☐	OK	
		☐	Not OK	
12.	Method of working (Method Statement) submitted with the Work Program is complying with the contractual requirements and acceptable work practices.	☐	OK	
		☐	Not OK	

Project Director/Project Manager

SPECIMEN LETTER : SL/CA 17/ 01 NOTIFICATION OF COMMENTS ON WORK PROGRAM

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Notification of Comments on Work Program

We refer to your letter ref: [Reference No.] dated [Date], within which you submitted your Work Program to the Engineer in accordance with Sub-Clause 8.3 of the General Conditions of Contract.

Upon carefully reviewing your above Program, we wish to notify you in accordance with Sub-Clause 8.3 that said Program is not complying with the requirements stipulated in the Contract due to following reasons:

- 1.
- 2.
- 3.

Accordingly we hereby instruct you to submit a revised work Program to the Engineer to address above concerns raised, in accordance with Sub-Clause 8.3.

Thanking you.

Yours faithfully,

Project Director

cc:

1. Head of the Entity
2. [Team Leader, Supervision Consultants]

Attachments for Procedure CA/18

SPECIMEN LETTER : SL/CA 18/ 01 – SUBMISSION OF CASH FLOW FORECAST

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Submission of Cash Flow Forecast

We hereby instruct you to submit your non-binding estimates of the payments for quarterly periods (quarterly Cash Flow Forecast) in accordance with Sub-Clause 14.4 of the General Conditions of Contract, within 42 days after the Commencement Date.

Please note that revised estimated quarterly Cash Flow Forecasts shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

Thanking you.

Yours faithfully,

Project Director

cc:

1. Head of the entity
2. [Team Leader, Supervision Consultants]

Attachments for Procedure CA/19

SL/CA 19/ 01– LETTER NOTIFYING THE APPOINTMENT OF THE EMPLOYER'S REPRESENTATIVE

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Appointment of the Employer's Representative

We hereby notify you that Mr. [Name of the Employer's Representative], Project Director of the [Name of the Project] has been appointed as the Employer's Representative for the captioned Contract.

Accordingly we hereby advise you to send your contractual correspondence, including any notifications, to the Project Director, on behalf of the Employer, in accordance with the provisions of the Contract.

Please acknowledge the receipt of this letter.

Thanking you.

Yours faithfully,

Chairman

cc:

1. Secretary, [Line Ministry], Procurement Committee
2. Head of the Entity
3. [Project Director]
4. Engineer
5. [Funding Agency]

Attachments for Procedure CA/20

CL/CA 20/ 01 – PERFORMANCE SECURITY ACCEPTANCE CHECKLIST

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status	Remarks
1.	Contractor's bid security remain valid	☐ OK ☐ Not OK ☐ Not Applicable	
2.	Performance Security is in the format specified in the Contract or in a format acceptable to the Employer	☐ OK ☐ Not OK ☐ Not Applicable	
3.	Performance Security is for the amount specified in the Contract	☐ OK ☐ Not OK ☐ Not Applicable	
4.	Performance Security is from a bank/agency acceptable to the Employer	☐ OK ☐ Not OK ☐ Not Applicable	
5.	If the bank which issued the Performance Security is not a bank operating in Sri Lanka, the Performance Security has been confirmed by a bank operating in Sri Lanka, acceptable to the Employer	☐ OK ☐ Not OK ☐ Not Applicable	
6.	The bank which issued/confirmed the Performance Security has confirmed that the Performance Security submitted by the Contractor is genuine and enforceable.	☐ OK ☐ Not OK ☐ Not Applicable	

Project Director/Project Manager

SL/CA 020/ 01 – LETTER TO BANK FOR VERIFICATION OF AUTHENTICITY OF THE PERFORMANCE SECURITY

[Reference]

[Date]

Manager

[Name of the Bank which issued/confirmed the Performance Security]

[Address of the Bank]

Dear Sir,

Project : [Name of the Project]

Contract No. : [Contract No.]

Subject : Performance Security [Ref, No. of Performance Security] dated [Date of Performance Security]

We refer to the Performance Security No. [Ref, No. of Performance Security] dated [Date of Performance Security], [provided/confirmed] by your bank on behalf of the Contractor for [Name of the Project] project; [Name of the Contractor], a copy of which is enclosed.

In terms of the said Performance Security, you have agreed to pay us up to a [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand.

We wish to request you to confirm in writing, authenticity of the said Performance Security which shall remain valid and in force until [Expiry date].

We also wish to request you to confirm in writing your undertaking to pay us any sum within the limit of [Guaranteed amount in letters]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand, without any cavil, arguments or to prove or show grounds or reasons for our demand or the sum specified therein, disregarding any dispute we may have with the Contractor with regard to the underlying contract with us.

Thanking you.

Yours faithfully,

[Name of the Project Director]

SL/CA 020/ 02– LETTER TO BANK DEMANDING PAYMENT OF GUARANTEED AMOUNT IF PERFORMANCE SECURITY IS NOT EXTENDED

[Reference]

[Date]

Manager

[Name of the Bank]

[Address of the Bank]

Dear Sir,

Project : [Name of the Project]

Contract No. : [Contract No.]

Subject : Letter of Demand to Pay Sums Guaranteed under the Performance Security [Ref, No. of Performance Security] dated [Date of Performance Security]

We refer to the Performance Security No. [Ref, No. of Performance Security] dated [Date of Performance Security], provided by your bank on behalf of the Contractor for [Name of the Project] project; [Name of the Contractor].

In terms of the said Performance Security, you have agreed to pay us up to a [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand.

We wish to inform you that the Contractor is yet to extend the said Performance Security, expiry date of which is on [Expiry date]. We have already advised the Contractor to extend the validity of said Performance Security until [Date] through our letter reference [Reference No.] dated [Date of the letter], (a copy of which is attached), as the Performance Certificate has not been issued, for reasons attributable to the Contractor.

We wish to request you to confirm in writing whether the said Performance Security has been extended and the same remain valid and in force until [Date].

If the said Performance Security is not extended, before the expiry of the same on [Expiry date], we hereby advise you to consider this as our demand for payment of [Guaranteed amount in letters]([Guaranteed amount in numbers]) guaranteed under the said Performance Security, as the Performance Certificate has not been issued, for reasons attributable to the Contractor.

Accordingly, if the said Performance Security is not extended on or before [Expiry date], we hereby demand you to pay us [Guaranteed amount in letters]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], the Contractor, as guaranteed in the above referred Performance Security, to our Bank Account, details of which are given below,

Account No : [Account No]

Account Name : [Account Name]

Bank Name : [Name of the Bank], Sri Lanka

Bank Code : 7010

Branch Code : 051

Swift Code : BCEYKLX

We appreciate your early and prompt action.

Thanking you.

Yours faithfully,

[Name of the Chairman]

[Name of the Entity]

Enclosed: 1. A copy of the Performance Security No. [Ref, No. of Performance Security] dated [Date of Performance Security]
2. Authentication of authorize signature by a notary public

cc:

1. Secretary ([Name of the Line Ministry])
2. Project Director
3. Resident Engineer

SL/CA 020/ 03 – LETTER TO BANK DEMANDING PAYMENT OF GUARANTEED AMOUNT IF THE CONTRACT IS BREACHED

[Reference]

[Date]

Manager

[Name of the Bank]

[Address of the Bank]

Dear Sir,

Project : [Name of the Project]

Contract No. : [Contract No.]

Subject : Letter of Demand to Pay Sums Guaranteed under the Performance Security [Ref, No. of Performance Security] dated [Date of Performance Security]

We refer to the Performance Security No. [Ref, No. of Performance Security] dated [Date of Performance Security], provided by your bank on behalf of the Contractor for [Name of the Project] project; [Name of the Contractor].

You have undertaken within the above referred Performance Security, to pay us any sum within the limit of [Guaranteed amount in letters]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand.

We also wish to inform you that the Contractor has breached the Contract by [the respect in which the Principal is in breach] and the said Performance Security is still remaining valid as the Performance Certificate is yet to be issued.

Accordingly we hereby demand you to pay us [Guaranteed amount in letters]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], the Contractor, as guaranteed in

the above referred Performance Security, to our Bank Account, details of which are given below,

Account No : [Account No]
Account Name : [Account Name]
Bank Name : [Name of the Bank], Sri Lanka
Bank Code : 7010
Branch Code : 051
Swift Code : BCEYLKLX

We appreciate your prompt action.

Thanking you.

Yours faithfully,

[Name of the Chairman]
Chairman
[Name of the Entity]

Enclosed: 1. A copy of the Performance Security No. [Ref, No. of Performance Security]
dated [Date of Performance Security]
2. Authentication of authorize signature by a notary public

cc:

1. Secretary (My W&D)
2. Head of the Entity
3. Resident Engineer
4. Project Director

[Reference]

[Date]

Manager
[Name of the Bank]
[Address of the Bank]

Authentication of Authorized Signature

I hereby certify that the signature below which was placed before me, is a genuine and authentic signature of [Name of the Chairman/General Manger], [Chairman/General Manger] of [Name of the entity] of Sri Lanka, according to records pertaining to the following bank account maintained in this bank.

Account No:

Account Type:

[Signature of the Chairman/General Manger] [Name of the Chairman/General Manger]

Manager
[Name of the Bank with whom Entity has its account]
[Date]

SF/CA 020/ 01 – PERFORMANCE SECURITY - DEMAND GUARANTEE

Brief description of Contract [Name of the Project]

Name and address of Beneficiary [Name and address of the Employer] (whom the Contract defines as the Employer).

We have been informed that [Name of the Contractor] (hereinafter called the "Principal") is your contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we [Name of the Bank] hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of (the "guaranteed amount", say: [Guaranteed amount]) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (b) the respect in which the Principal is in breach.

Any demand for payment must contain your Chairman's or Head of the Entity's signature which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before [the date 70 days after the expected expiry of the Defects Notification Period for the Works] (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of Sri Lanka and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date

Signature(s)

Attachments for Procedure CA/21

CL/CA 21/ 01 –CHECKLIST FOR ACCEPTANCE OF INSURANCE

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status	Remarks
1.	Contractor submits evidence of insurance such as copies of the policies for the insurances and receipts for payments of insurance premiums	☐ OK ☐ Not OK ☐ Not Applicable	
2.	Insurance Policies submitted by the Contractor fulfil the insurance requirements stipulated in the Contract and/or agreed by the parties prior to the date of the Letter of Acceptance	☐ OK ☐ Not OK ☐ Not Applicable	
3.	Insurance policy states the Employer as a joint insured.	☐ OK ☐ Not OK ☐ Not Applicable	
4.	Deductibles and exclusions included within insurance policies are complying with the Contract and/or agreed by the parties prior to the date of the Letter of Acceptance.	☐ OK ☐ Not OK ☐ Not Applicable	
5.	Insurance coverage is in force during the entire period stipulated in the Contract	☐ OK ☐ Not OK ☐ Not Applicable	

Project Director/Project Manager

Attachments for Procedure CA/22

SL/CA 22/ 01 – LETTER TO THE CONTRACTOR REQUESTING ACCOUNT DETAILS

[Letter Reference No.]

[Date]

Project Manager

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

Contract No. [Contract No]

Subject: Arrangement for Disbursement of Payments

We hereby request you to make arrangements for disbursement of contractual payments with your bank and inform us detailed information on your account, for us to establish mechanisms for such payments with our bank.

Thanking you.

Yours faithfully,

[Name of the PD]

Project Director

cc:

1. [Head of the Entity]
2. [funding Agency]

Attachments for Procedure CA/23

CL/CA 23/ 01 – ADVANCE PAYMENT GUARANTEE ACCEPTANCE CHECKLIST

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status		Remarks
1.	Advance Payment Guarantee is in the format specified in the Contract or in a format acceptable to the Employer	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
2.	Advance Payment Guarantee is for the amount specified in the Contract or for the amount contractor has requested as the Advance Payment, whichever is less	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
3.	Advance Payment Guarantee is from a bank/agency acceptable to the Employer	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
4.	If the bank which issued the Advance Payment Guarantee is not a bank operating in Sri Lanka, the Advance Payment Guarantee has been confirmed by a bank operating in Sri Lanka, acceptable to the Employer	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
5.	The bank which issued/confirmed the Advance Payment Guarantee has confirmed that the Advance Payment Guarantee submitted by the Contractor is genuine and enforceable.	☐	OK	
		☐	Not OK	
		☐	Not Applicable	

Project Director/Project Manager

**SL/CA 023/ 01 – LETTER TO BANK FOR VERIFICATION OF AUTHENTICITY OF THE
ADVANCE PAYMENT GUARANTEE**

[Reference]

[Date]

Manager

[Name of the Bank which issued/confirmed the Advance Payment Guarantee]

[Address of the Bank]

Dear Sir,

Project : [Name of the Project]

Contract No. : [Contract No.]

Subject : Advance Payment Guarantee[Ref: No. of Advance Payment Guarantee]
dated [Date of Advance Payment Guarantee]

We refer to the Advance Payment Guarantee No. [Ref, No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee], [provided/confirmed] by your bank on behalf of the Contractor for [Name of the Project] project; [Name of the Contractor], a copy of which is enclosed.

In terms of the said Advance Payment Guarantee, you have agreed to pay us up to a sum of [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand.

We wish to request you to confirm in writing, authenticity of the said Advance Payment Guarantee which shall remain valid and in force until [Expiry date].

We also wish to request you to confirm in writing your undertaking to pay us any sum within the limit of [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand, without any cavil, arguments or to prove or show grounds or reasons for our demand or the sum specified therein, disregarding any dispute we may have with the Contractor with regard to the underlying contract with us.

Thanking you.

Yours faithfully,

[Name of the Project Director]

**SL/CA 023/ 02 – LETTER TO BANK DEMANDING PAYMENT OF GUARANTEED
AMOUNT IF ADVANCE PAYMENT GUARANTEE IS NOT EXTENDED**

[Reference]

[Date]

Manager

[Name of the Bank]

[Address of the Bank]

Dear Sir,

Project : [Name of the Project]
Contract No. : [Contract No.]
Subject : Letter of Demand to Pay Sums Guaranteed under the Advance Payment Guarantee [Ref, No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee]

We refer to the Advance Payment Guarantee No. [Ref, No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee], provided by your bank on behalf of the Contractor for [Name of the Project] project; [Name of the Contractor].

In terms of the said Advance Payment Guarantee, you have agreed to pay us up to a sum of [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand.

We have advised the aforesaid Contractor to extend the validity of said Advance Payment Guarantee until [Date] by our letter [Reference No.] dated [Date of the letter], (a copy of which is attached), as the advance payment has not been fully repaid yet. We wish to inform you that the Contractor is yet to extend the said Advance Payment Guarantee, expiry date of which is on [Expiry date].

We wish to request you to confirm in writing whether the said Advance Payment Guarantee has been extended and the same remain valid and in force until [Date].

If the said Advance Payment Guarantee is not extended, before the expiry of the same on [Expiry date], we hereby advise you to consider this as our demand for payment of [Guaranteed amount]([Guaranteed amount in letters] guaranteed under the said Advance Payment Guarantee, as the advance payment has not been repaid yet.

Accordingly, if the said Advance Payment Guarantee is not extended on or before [Expiry date], we hereby demand you to pay us [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], the Contractor, as guaranteed in the above referred Advance Payment Guarantee, to our Bank Account, details of which are given below:

Account No :
Account Name:
Bank Name :
Bank Code :
Branch Code :
Swift Code :

We appreciate your early and prompt action.
Thanking you.
Yours faithfully,

[Name of the Chairman]

Enclosed: 1. A copy of the Advance Payment Guarantee No. [Ref, No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee]
2. Authentication of authorize signature by a notary public

cc:

1. Secretary
2. Head of the Entity
3. Project Director
4. Resident Engineer

[Reference]

[Date]

Manager

[Name of the Bank]

[Address of the Bank]

Authentication of Authorized Signature

I hereby certify that the signature below which was placed before me, is a genuine and authentic signature of [Name of the Chairman/General Manger], [Chairman/General Manger] of [name of entity], according to records pertaining to the following bank account maintained in this bank.

Account No. :

Account Type :

[Signature of the Chairman/General Manger]

[Name of the Chairman/General Manger]

Manager

[Name of the Bank with whom the entity has its account]

[Date]

SL/CA 023/ 03 – LETTER TO BANK DEMANDING PAYMENT OF GUARANTEED AMOUNT IF THE CONTRACTOR HAS FAILED TO FULLY REPAY THE ADVANCE PAYMENT

[Reference]

[Date]

Manager

[Name of the Bank]

[Address of the Bank]

Dear Sir,

Project : [Name of the Project]

Contract No. : [Contract No.]

Subject : Letter of Demand to Pay Sums Guaranteed under the Advance Payment Guarantee [Ref. No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee]

We refer to the Advance Payment Guarantee No. [Ref, No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee], provided by your bank on behalf of the Contractor for [Name of the Project] project; [Name of the Contractor].

In terms of the said Advance Payment Guarantee, you have agreed to pay us up to a sum of [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], upon our first written demand.

We wish to inform you that the aforesaid Contractor has failed to repay an amount of Rs[Amount to be repaid] of the Advance Payment, in accordance with the conditions of the Contract.

Accordingly we hereby demand you to pay us [Guaranteed amount]([Guaranteed amount in letters]), on behalf of [Name of the Contractor], the Contractor, as guaranteed in the above referred Advance Payment Guarantee, to our Bank Account, details of which are given below,

Account No :
Account Name:
Bank Name :
Bank Code :
Branch Code :
Swift Code :

We appreciate your prompt action.

Thanking you.

Yours faithfully,
[Name of the Chairman]
Chairman

Enclosed: 1. A copy of the Advance Payment Guarantee No. [Ref, No. of Advance Payment Guarantee] dated [Date of Advance Payment Guarantee]
2. Authentication of authorize signature by a notary public

cc:

1. Secretary
2. Head of the Entity
3. Resident Engineer
4. Project Director

[Reference]

[Date]

Manager
[Name of the Bank]
[Address of the Bank]

Authentication of Authorized Signature

I hereby certify that the signature below which was placed before me, is a genuine and authentic signature of [Name of the Chairman/General Manger], [Chairman/General Manger] of [insert name of entity], according to records pertaining to the following bank account maintained in this bank.

Account No. : [Account No.]

Account Type : [Account type]

[Signature of the Chairman/General Manger] [Name of the Chairman/General Manger]

Manager

[Name of the Bank with whom the entity has its account]

[Date]

Attachments for Procedure CA/24

CHECKLIST : CL/CA 24/ 01 – ADVANCE PAYMENT CHECKLIST

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No	Activity	Status	Remarks
1.	Amount of Advance Payment applied for is correct based on the specified percentage of Accepted Contract Amount	☐ OK ☐ Not OK	
2.	Number and timing of instalments are correct	☐ OK ☐ Not OK ☐ Not Applicable	
3.	Currency proportions are correct	☐ OK ☐ Not OK ☐ Not Applicable	
4.	Conditions precedent for releasing the Advance Payment have been fulfilled	☐ OK ☐ Not OK ☐ Not Applicable	
5.	An acceptable and valid Advance Payment Guarantee/Security has been submitted	☐ OK ☐ Not OK	
6.	An acceptable and valid Performance Guarantee/Security has been submitted	☐ OK ☐ Not OK	
7.	A statement for the Advance Payment has been submitted	☐ OK ☐ Not OK	

Project Director/Project Manager

Attachments for Procedure CA/25

SPECIMEN LETTER : SL/CA 25/ 01 – APPOINTMENT OF DB MEMBERS

[LETTER REFERENCE NO.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Subject: Appointment of Dispute Board Members

We wish to nominate [Name of the DB member] as a Dispute Board member, in accordance with Sub-Clauses 20.2 [Appointment of the Dispute Board] of the Conditions of Contract, for your approval.

Accordingly we hereby request you to nominate a Dispute Board member and also your early confirmation of the Dispute Board member nominated by us.

Thanking you.

Yours faithfully,

[Project Director]

cc:

1. Head of Entity
2. Engineer
3. DB Member

Attachments for Procedure CA/26

SPECIMEN LETTER : SL/CA 26/ 01 – APPROVAL FOR SITE INSTALLATIONS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Subject: Approval for Installation of [Name of the Installation; e.g. Batching Plant]

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have requested our prior approval for your proposed installation of [Name of the Installation].

Upon reviewing your above proposal, we wish to grant you our prior approval for your proposed installation of [Name of the Installation], subject to following conditions:

- 1.
- 2.

3.

Thanking you.

Yours faithfully,

[Project Director]

cc:

1. Head of Entity
2. Engineer

Attachments for Procedure CA/27

SPECIMEN LETTER : SL/CA 27/ 01 – APPROVAL FOR SUB CONTRACTORS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Subject: Approval for Sub Contractors

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have requested our prior approval for proposal to engage [Name of the sub contractor] as your sub contractor for [Scope of sub contract].

Upon reviewing your above proposal, in accordance with Sub-Clause 4.5 [Subcontractors] of the General Conditions of Contract, we wish to grant our prior approval for your proposal to engage [Name of the sub contractor] as your sub contractor for [Scope of sub contract].

Thanking you.

Yours faithfully,

[Project Director]

cc:

Head of Entity

Engineer

Attachments for Procedure CA/28

SPECIMEN LETTER: SL/CA 28/ 01 – APPOINTMENT OF NOMINATED SUBCONTRACTORS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Subject: Appointment of Nominated Subcontractor for [Scope of sub contract]

We hereby instruct you to employ [Name of the Nominated Subcontractor] as a Nominated Subcontractor for [Scope of sub contract] in accordance with Sub-Clause 5.1 of the Conditions of Contract.

Accordingly, we advise you to enter into a subcontract with the said subcontractor, subject to the provisions in the Sub-Clause 5.2 of the Conditions of Contract.

Thanking you.

Yours faithfully,

[Project Director]

cc:

1. Head of Entity
2. Engineer

Attachments for Procedure CA/29

CHECKLIST : CL/CA 29/ 01 –CHECKLIST FOR METHOD STATEMENTS

Checklist for Method Statements

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No	Activity	Status	Remarks
1.	Detailed descriptions of method of working for each work activity are provided	☐ OK ☐ Not OK	
2.	Type and number of major equipment to be used for each work activity are provided	☐ OK ☐ Not OK ☐ Not Applicable	
3.	Sources of major materials required and information on their compliance with the Contract are indicated.	☐ OK ☐ Not OK	
4.	Safety concerns to be addressed are	☐ OK	

	identified	☐	Not OK	
		☐	Not Applicable	
5.	Inspections and tests to be carried out including hold points for quality control are included	☐	OK	
		☐	Not OK	
6.	Any interfering with public and proposal for mitigation of the same are identified	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
7.	Prior approvals and permissions required are identified	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
8.	Estimated productivity rates and time periods are included	☐	OK	
		☐	Not OK	

Project Director/Project Manager

Attachments for Procedure CA/30

SPECIMEN LETTER : SL/CA 30/ 01 – APPROVAL OF MATERIALS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Approval of Materials

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have requested our prior approval for [Name of the Material].

Upon inspecting and testing the samples of materials and reviewing information submitted by you, we hereby grant our prior approval to use materials from the same source which provided samples for submission.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

Attachments for Procedure CA/31

SPECIMEN LETTER : SL/CA 31/ 01 – HANDING OVER OF FREE-ISSUE MATERIALS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Handing Over of Free-Issue Materials

We intend to hand over following free-issue materials which are to be used in the permanent Works, in accordance with the Contract:

S/No	Description of the Material	Unit	Quantity	Remarks
.				

Accordingly, we hereby advise you to make arrangements to take over above materials from our stores at [location].

Thanking you.

Yours faithfully,

Project Director

cc:

1. Head of Entity
2. Engineer

Attachments for Procedure CA/32

SF/CA 32/ 01 DAILY REPORT

Project Name : [Project Name]

Contract Name : [Contract Name]

Contract No : [Contract No]

Date :

Section :

Weather	
Time	Status

Progress of the Works			
Location	Description of work in progress	Instructions/NCNs issued	Remarks

Test Carried out			
Location	Description of the Test	Results	Remarks
Mobilization and Demobilization of Major Construction Equipment			
Equipment	Description	Remarks	

Safety Concerns :	
Environmental Concerns :	
Public Complaints :	
Any other Concerns :	
Visitors :	

Engineer's Assistant

SPECIMEN LETTER : SL/CA 32/ 01 – FORMAT FOR DAILY REPORT

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Acceptance of Daily Report Format

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your proposed format for Daily Report for our acceptance.

Upon reviewing your proposed format for Daily Report, we hereby give our acceptance for the same.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

Attachments for Procedure CA/33

SPECIMEN LETTER : SL/CA 33/ 01 – FORMAT FOR CONTRACTOR’S MONTHLY STATEMENTS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Acceptance of Contractor’s Monthly Statement Format

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your proposed format for Contractor’s Monthly Statements for our acceptance.

Upon reviewing your proposed format for Contractor’s Monthly Statements, we hereby give our acceptance for the same.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

Attachments for Procedure CA/34

SPECIMEN LETTER : SL/CA 34/ 01 – FORMAT FOR CONTRACTOR’S MONTHLY PROGRESS REPORT

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Acceptance of Contractor’s Monthly Progress Report

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your proposed format for Contractor’s Monthly Progress Report for our acceptance.

Upon reviewing your proposed format for Contractor’s Monthly Progress Report, we hereby give our acceptance for the same.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

Attachments for Procedure CA/35

SPECIMEN LETTER : SL/CA 35/ 01 – ENGINEER’S INSTRUCTION

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Engineer’s Instruction No. [Serial No.]for [Title of the Instruction]

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have requested our instructions/clarifications on the captioned matter.

Please find enclosed Engineer’s Instruction No. [Serial No.]for [Title of the Instruction], issued in accordance with Sub-Clause 3.3 of the Conditions of Contract.

[Please note that you would not be entitled to any extension of time for completion and/or additional costs due to this instruction, as this instruction is issued merely to clarify certain matters which were not clear to you.]

Thanking you.

Yours faithfully,

Engineer

cc: Project Director

SF/CA 35/ 01 – ENGINEER’S INSTRUCTION

ENGINEER’S INSTRUCTION [Project Name]	
Contract : [Name of the Contract] Contract No. :	
Engineer’s Instruction No.: [Serial No.]	Date: [Date of instruction]
To : [Name of the Contractor], the Contractor	
Instruction: This instruction is issued in accordance with Sub-Clause 3.3 of the Conditions of Contract. You are hereby instructed as follows: (signed) The Engineer/Engineer’s Assistant	
Enclosed : Drawings [Drawing Nos.]	
Original : Contractor Copies : Employer	

Attachments for Procedure CA/36

**SPECIMEN LETTER : SL/CA 36/ 01 – FORMAT FOR CONTRACTOR'S
LABOUR/EQUIPMENT RETURNS**

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Acceptance of Formats for Contractor's Labour/Equipment Returns

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your proposed format for Contractor's Labour/Equipment Returns for our acceptance.

Upon reviewing your proposed format for Contractor's Labour/Equipment Returns, we hereby give our acceptance for the same.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

Attachments for Procedure CA/37

SF/CA 37/ 01 NON CONFORMANCE NOTICE (NCN)

Project Name : [Project Name]

Contract Name : [Contract Name]

Contract No : [Contract No]

The Contractor is hereby instructed to propose remedial on the following non-conformances, details of which are given below:

1. To be filled by the Engineer/Engineer's Assistants		
A	Serial No. allocated	
B	Location of the non-conformance	
C	Date of Reporting	
D	Description of the non-conformance	
E	Date of NCN	
F	Deadline for taking action	

Engineer/Engineer's Assistant

2. To be filled by the Contractor		
A	Investigations/Tests Required	
B	Root cause for the non-conformance	
C	Remedial Action proposed	
D	Date of proposal	
E	Scheduled date for completion of remedial action	

Contractor's Representative

3. Approval for Remedial Action and close up of the Remediation process			
A	Approval for proposed Remedial Action		
B	Implementation of Remedial Action		
C	Date of completion of Remedial Action		
D	Close out of Remedial Action		
E	Scheduled date for completion of remedial action		

Engineer/Engineer's Assistant

SF/CA 37/ 02 CORRECTIVE ACTION REQUEST (CAR)**Project Name** : [Project Name]**Contract Name** : [Contract Name]**Contract No** : [Contract No]

The Contractor is hereby instructed to propose corrective action on the following non-conformances, details of which are given below:

1. To be filled by the Engineer/Engineer's Assistants		
A	Serial No. allocated	
B	Description of the non-conformance	
C	NCN No.	
D	Date of CAR	
E	Deadline for taking action	

Engineer/Engineer's Assistant

2. To be filled by the Contractor		
A	Investigations/Tests Required	
B	Root cause for the non-conformance	
C	Corrective Action proposed to prevent reoccurrence	
D	Date of proposal	
E	Scheduled date for completion of corrective action	

Contractor's Representative

3. Approval for Corrective Action and close up			
A	Approval for proposed Corrective Action		
B	Implementation of Corrective Action		
C	Date of completion of Corrective Action		
D	Close out of Corrective Action		

Engineer/Engineer's Assistant

SPECIMEN LETTER : SL/CA 37/ 01 – REVIEW CONTRACTOR’S QUALITY ASSURANCE SYSTEM & QUALITY PLANS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Review of the Contractor’s Quality Assurance System & Quality Plans

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your Quality Assurance System & Quality Plans, for our information.

We have reviewed your Quality Assurance System & Quality Plans, and we have no objections for you to implement said system for this Contract.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

SPECIMEN LETTER : SL/CA 37/ 02 –CONTRACTOR’S QUALITY ASSURANCE SYSTEM & QUALITY PLANS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Acceptance of the Contractor’s Quality Assurance System & Quality Plans

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your Quality Assurance System & Quality Plans, for our acceptance.

Upon reviewing your Quality Assurance System & Quality Plans, we have following comments/concerns regarding the same:

1.

Thanking you.

Yours faithfully,

Engineer

cc:Project Director

Attachments for Procedure CA/38

SF/CA 38/01 – MINUTES OF PROGRESS REVIEW MEETING

MINUTES OF PROGRSS REVIEW MEETING		
[Organization]		
PROJECT: CONTRACT : CONTRACT NO. ENGINEER: CONTRACTOR :		
Date of the meeting :		Venue :
Participants :		
	Name	Position/Organization
1		
2		
Item	Description	Action By
1.0	Adoption of previous meeting minutes	
2.0	Contractor's Report • Progress • Manpower Return • Equipment Return	
3.0	Material Status • Approved • Not Approved • Pending Approval	
4.0	Quality Assurance (Tests Conducted)	
Item	Description	Action By
5.0	Financial Status • Monthly Interim Payments • Variation Orders	
6.0	Relocation of existing utility services	
7.0	Any work interrupted due to land acquisition matters	
8.0	Design drawings and other details	
9.0	Safety and traffic management	
10.0	Environmental issues and public complaints	
11.0	Maintenance of existing road surface	
	As Built Documents	

12.0	• Drawings • Operational and Maintenance Guides Contractor's Questions	
13.0	Engineer's Remarks	
14.0	Employer's Remarks	
15.0	Any Other Issues	
16.0	Distribution to:	
17.0	i. Contractor ii. Employer iii. Participants iv. Any others Date of Next Meeting	

Attachments for Procedure CA/39

SF/CA 39/01 – MONTHLY PROGRESS REPORT

[Organization]	
PROJECT : CONTRACT : CONTRACT NO: ENGINEER: CONTRACTOR:	
<i>For the Month :</i>	
SECTION 1 - SECTION 2 - SECTION 3 - SECTION 4 - SECTION 5 - SECTION 6 - SECTION 7 - SECTION 8 - SECTION 9 - SECTION 10 - SECTION 11 - SECTION 12 -	<u>MONTHLY PROGRESS REPORT NO.</u> Project Summary Project Description Executive Summary Progress of Work (Physical & Financial) Variation Orders Claims Critical Issues Minutes of Meeting Contractor's Report Quality Control Report Environmental and Social Issues Progress Photographs

Attachments for Procedure CA/40

SF/CA 40/01 – QUARTERLY PROGRESS REPORT FORMAT

[Project] Funded by [Funding Agencies]	
EXECUTING AGENCY	:
IMPLEMENTATION AGENCY	:
<i>For the Quarter :</i>	
<u>QUARTERLY PROGRESS REPORT NO.</u> SECTION 1 - Executive Summary	

SECTION 2	-	Project Purpose and Project Data
SECTION 3	-	Implementation Arrangements
SECTION 4	-	Financing Plan and funding Details
SECTION 5	-	Utilization of Funds
SECTION 6	-	Implementation Progress (Physical & Financial)
SECTION 7	-	Major Project Issues/Problems and Recommendations
SECTION 8	-	Compliance with Loan Covenants
SECTION 9	-	Environmental Concerns
SECTION 10	-	Progress of Land Acquisition and Resettlement
APPENDICES		
Appendix – 1	:	Project Map
Appendix – 2	:	Disbursement details
Appendix – 3	:	Implementation Schedule and Progress Computation
Appendix – 4	:	S-Curve for Construction Contract
Appendix – 5	:	Status of Compliance with Loan Covenants
Appendix – 6	:	Progress of Land Acquisition and Resettlement
Appendix – 6	:	Status of Mitigation of Environmental and Social Impacts

Attachments for Procedure CA/41

SF/CA 41/01 – ANNUAL PROGRESS REPORT FORMAT

[Project] Funded by [Funding Agencies]
EXECUTING AGENCY :
IMPLEMENTATION AGENCY :
<i>For the Year :</i>
<u>ANNUAL PROGRESS REPORT NO.</u>
SECTION 1 - Executive Summary
SECTION 2 - Introduction

SECTION 3	-	Implementation Progress (Physical & Financial)
SECTION 4	-	Implementation Schedule
SECTION 5	-	Disbursement of Funds
SECTION 6	-	Forecast of Costs
SECTION 7	-	Status of Resolving Critical Issues
SECTION 8	-	Changes to Scope of the Project

Attachments for Procedure CA/42

SF/CA 42/ 01 – AGENDA FOR THE STEERING COMMITTEE MEETING

Project:	
Venue:	
Date:	
Time:	
AGENDA	
S/No.	Item
1.	Welcome and Introductions
	Confirmation of minutes of previous meeting
2.	Progress of implementation
3.	Critical Issues
4.	Land Acquisition and Resettlement
5.	Social and Environmental Issues
6.	Status of Post resettlement Social Impact Mitigation Measures
7.	Status of Environmental Impact Monitoring
8.	Project Performance Monitoring and Evaluation
9.	Expenditure
10	Status of Resolutions Adopted by the Steering Committee
11	Other Business
12	Next Meeting
	Close

Project Director/Project Manager

SF/CA 42/ 02 – ATTENDANCE RECORD FOR THE STEERING COMMITTEE MEETING

S/No	Name	Designation	Organization	Contact Telephone No.	Email Address

SF/CA 42/ 03 – MINUTES OF THE STEERING COMMITTEE MEETING

[Project Name]

Minutes of the Steering Committee Meeting No.[Serial No. of the meeting] Held on [Date of the meeting] at [Time of the meeting]
At the Conference Hall of [Venue]

Present

S/No	Name	Designation	Organization

Absent with Apologies

S/No	Name	Designation	Organization
S/No.	Matters Discussed		Action
1.	<u>General</u>		
	Mr/Ms[Name of the Secretary], the Secretary of the [Name of the Line Ministry] chaired the meeting and the Secretary opened the meeting by welcoming all participants.		
	[Confirmation of minutes of previous meeting upon inviting for comments]		
2.	Progress of implementation		
	[Presentation of progress of each contract by the respective Supervision Consultant]		
3.	Critical Issues		
	[Discussion of critical issues affecting the progress of each contract and follow up of such critical issues raised in previous meetings]		
4.	Land Acquisition and Resettlement		
	[Presentation of progress in land acquisition and resettlement and discussion on issues affecting progress]		
5.	Social and Environmental Issues		
	[Discussion on social and environmental issues]		
6.	Status of Post resettlement Social Impact Mitigation Measures		
	[presentation on progress of implementing social impact mitigation measures such as Grievance Redress Committees, livelihood restoration Program and special assistance to vulnerable people.]		
7.	Status of Environmental Impact Monitoring		
8.	Project Performance Monitoring and Evaluation		
9.	Expenditure		
10.	Status of Resolutions Adopted by the Steering Committee		
	[Establishing new resolutions necessary to enhance the performance of the project and discussion on follow up of		

	previous resolutions.]	
11.	Any other Business	
	Since there was no further business, the Secretary thanked all participants and declared the meeting closed.	
12.	Date and Time of the Next Steering Committee Meeting	
	Next Steering Committee Meeting No. [Serial No. of the next meeting], was agreed to be held on [date] at [Time of the meeting]	

Prepared by

[Name and Position]

Vetted by

[Name and Position]

Approved by

Project Director

Attachments for Procedure CA/43

SF/CA 43/ 01 –RECORDING FORMAT FOR PROGRESS MONITORING

Contract Name :[Contract Name]

Contract No :[Contract No]

Month : [Month] Year : [Year]

Activity No.	BOQ Item No.	Description	BOQ Quantity	Quantity Completed			Percentage Completed		
				Up to Previous Month	This Month	Cumulative	Up to Previous Month	This Month	Cumulative

Attachments for Procedure CA/44

SF/CA 44/01 – REGISTER FOR CRITICAL ISSUES

Register for Critical Issues

Item No.	Description of the Critical Issue	Registered Date	Action to be Taken	Action by	Critical Issue Resolved on	Remarks
1.						
2.						
3.						

Project Director/Project Manager

Attachments for Procedure CA/45

Format for this Procedure is included in the Project Management Volume of the GPMCM Guide

Attachments for Procedure CA/46

SF/CA 46/01 – UPDATING OF CONTRACT AMOUNT & FORECAST COST

Item No.	Description	Accepted Contract Amount	Contract Price	Contract Amount	Forecast Cost	Remarks
1.	Estimated Value of Works in the Contract	A				
2.	Value of works, services, Plants and materials completed	B	B	B	B	
3.	Value of works, services, Plants and materials to be done	C		C	C	
4.	Provisional Sums allocated in the Contract	D				
5.	Provisional Sums utilized		E	E	E	
6.	Provisional Sums required			F	F	
7.	Provisional Sum for Cost Escalation allocated in the Contract	G				
8.	Amount of cost escalation determined		H	H	H	
9.	Forecast amount of cost escalation in future			I	I	
10.	Provisional Sum for Contingencies allocated in the Contract	J				
11.	Unconfirmed Variation				K	
12.	Confirmed Variations		L	L	L	
13.	Claims not determined				M	
14.	Claims determined		N	N	N	
15.	Forecast for future variations and claims				O	
	Total	ACA	CP	CM	FC	

Project Director/Project Manager

Attachments for procedure CA/47

**SPECIMEN LETTER : SL/CA 47/ 02 – REQUEST FOR EVIDENCE TO SUBSTANTIATE
PROVISIONAL SUM PAYMENTS**

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Request for Evidence to Substantiate Provisional Sum Payments

We refer to your letter Ref: [Reference No. of the letter] dated [Date], within which you have submitted your cost proposal for carrying out works under the Provisional Sum for [Title of the Provisional Sum].

We hereby instruct you to produce information such as quotations, invoices, vouchers and accounts or receipts to substantiate the actual amounts paid (or due to be paid) by you to your subcontractors.

Thanking you.

Yours faithfully,

Engineer

cc: Project Director

Attachments for Procedure CA/48

SF/CA 48/01 –DRAWING REGISTER

Project Name]

[Contract Name]

Contract No. [Contract No.]

Drawing No.	Description of the Drawing	Revision Status/Date									Remarks
		A	B	C	D	E	F	G	H	I	

Attachments for Procedure CA/49

CL/CA 49/ 01 – VARIATION CHECK LIST

Project Name : [Project Name]

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity		Remarks
A	Issue No.		
B	Description of the Potential Variation		
C	Variation No.		

S/No.	Activity	Status		Remarks
1.	Initiation of the Variation	☐	By the Employer	
		☐	By the Engineer	
		☐	Requested by the Contractor	
2.	Engineer's Agreement	☐	Agreed	
		☐	Not Agreed	
3.	Employer's Specific Approval	☐	Required	
		☐	Not Required	
		☐	Obtained	
4.	Type of Variation	☐	Changes to Quantities	
		☐	Changes to Levels/Position	
		☐	Changes to Dimensions	
		☐	Quality	
		☐	Changes to Specifications	
		☐	Changes to Sequence	
		☐	Omissions	
		☐	Additional Works	
5.	Valuation of the Variation based on	☐	BOQ Rates	
		☐	Adjusted BOQ Rates	
		☐	New Rates to be agreed or determined	
6.	Contractor's proposal for variation	☐	Requested	
		☐	Not Requested	
		☐	Received	
7.	Valuation of the Variation	☐	Agreed	
		☐	Determined by the Engineer	
8.	Will variation affect the Time for Completion	☐	Yes	
		☐	No	

9.	EOT agreed with the Contractor	☐	Yes	
		☐	No	

Engineer

SF/CA 49/01 –VARIATION ORDER REGISTER

Project Name]

[Contract Name]

Contract No. [Contract No.]

Variation Orders Register

VO No.	Description of the VO	Date of Issue	Value of Work Added	Value of Work Omitted	Nett Value of Work	Employer's Approval	Remarks
1							

SF/CA 49/ 02 – VARIATION ORDER

Variation Order							
[Project Name]							
Contract : [Name of the Contract]							
Contract No. :							
Variation Order No. : VO [Serial No.]				Date of Issue: [Date of issue]			
To : [Name of the Contractor], the Contractor							
Subject : [Subject of the Variation Order]							
Variation:							
This Variation Order is issued in accordance with Sub-Clause 13.1 of the Conditions of Contract. You are hereby instructed to carry out following varied works:							
Item No.	Description	Unit	Quantity	Rate	Omission	Addition	Remarks
	Total						
Employer's Specific Approval in accordance with Sub-Clause 3.1 of the Conditions of Contract:							
Letter Ref:				Date:			
(signed) The Engineer/Engineer's Assistant							
Enclosed : Drawings [Drawing Nos]							
Original : Contractor							
Copies : Employer							

Attachments for PROCEDURE CA/50

SL/CA 50/ 01 – LETTER TO INFORM NEW RATES DETERMINED BY THE ENGINEER

[Letter Reference No.]

[Date]

Project Manager

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

Contract No. [Contract No]

Subject: New Rates

We hereby inform you that the Engineer has determined following new rates in accordance with the Sub-Clause 12.3 [Evaluation] of the General Conditions of Contract.

S/No.	Reference No.	Description	Rate
1			
2			

Thanking you.

Yours faithfully,

Engineer

cc:

1. [Head of the Entity]
2. [Project Director]
3. [funding Agency]

Attachments for Procedure CA/51

SF/CA 51/01 -REGISTER OF CONTRACTOR'S CLAIMS

Project Name]

[Contract Name]

Contract No. [Contract No.]

Register of Contractor's Claims

Claim No.	Description of the Claim	Date of Notice	Date of Submission	Amount Claimed	EOT Claimed	Status of Approval	Amount Approved	EOT Approved	Remarks
1									
2									
3									
4									

Attachments for Procedure CA/52

CL/CA 52/ 01 – EXTENSION OF TIME CHECK LIST

Project Name : [Project Name]

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity		Remarks
A	Issue No.		
B	Description of the Delay		
C	Entitlement as per Sub-Clause No.		
D	EOT Claim No.		
E	Extent of EOT claimed		
F	Prolongation cost claimed		
G	Extent of EOT recommended		
H	Prolongation cost recommended		

S/No.	Activity	Status		Remarks
1.	Notified to the Engineer within 28 days	☐	Yes	
		☐	No	
2.	Employer's Specific Approval	☐	Required	
		☐	Not Required	
		☐	Obtained	
3.	Cause of Delay	☐	A Variation	
		☐	Increase in Quantities	
		☐	Under a Sub-Clause in COC	
		☐	Delay/Prevention by Employer	
		☐	Exceptionally adverse climatic conditions	
		☐	Unforeseeable shortages in personnel/Goods	
4.	Detailed claim submitted	☐	Yes	
		☐	No	
5.	Type of Delay Analysis submitted	☐	Impacted As Planned	
		☐	Time Impact Analysis	
		☐	As planned as built analysis	
		☐	Collapsed as built analysis	
6.	Appropriate baseline programme used with clearly defined critical path	☐	Yes	
		☐	No	
8.	Concurrent delays	☐	Yes	
		☐	No	
9.	EOT rejected, agreed with the Contractor or determined	☐	Rejected	
		☐	Agreed	
		☐	Determined	
10.	Prolongation cost rejected, agreed with the Contractor or determined	☐	Rejected	
		☐	Agreed	
		☐	Determined	

Engineer

**SL/CA 52/ 01 – LETTER TO INFORM EXTENSION OF THE TIME FOR COMPLETION
DETERMINED BY THE ENGINEER**

[Letter Reference No.]

[Date]

Project Manager

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

Contract No. [Contract No]

Subject: Extension of the Time for Completion

We refer to your letter Ref: [Reference No.] dated [Date] within which you have notified the Engineer of your entitlement for an extension of Time for Completion for delay suffered due to [delay event] for which the Employer was responsible.

Accordingly, upon carrying out an delay analysis to assess the extent of delay suffered by you due to above said event, we have determined that you are entitled for an extension of Time for Completion of [No. of days] days in accordance with Sub-Clause 8.4 [Extension of Time for Completion].

We hereby instruct you to submit a revised work Program to reflect the new completion date for this Contract.

Thanking you.

Yours faithfully,

cc:

1. [Head of the Entity]
2. [Project Director]

Attachments for Procedure CA/53

SF/CA 53/01 -REGISTER OF EMPLOYER'S CLAIMS

[Project Name]

[Contract Name]

Contract No. [Contract No.]

Register of Employer's Claims

Claim No.	Description of the Claim	Date of Notice	Date of Submission	Amount Claimed	Extension to DNP Claimed	Status of Approval	Amount Approved	Extension to DNP Approved	Remarks
1									
2									
3									

Attachments for Procedure CA/54

SPECIMEN LETTER : SL/CA 54/ 01 – INSTRUCTION TO SUSPEND WORKS

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Instruction to Suspend Works

We hereby instruct you in accordance with the Sub-Clause 8.8 [Suspension of Works] of the General Conditions of Contract, to suspend the works of [description of the part of the works] with immediate effect until further notice.

[Please note that this suspension is required due to your delay in providing acceptable design for rectification measures for defects occurred in the works, for which you are responsible.]

Please ensure that such effected parts or the Works are secured and protected against any deterioration, loss or damage during the period of suspension.

Thanking you.

Yours faithfully,

Engineer

Enclosed: List of Outstanding Works and Defects

cc:

1. Head of Entity
2. [Project Director]
3. [Funding Agency]

Attachments for Procedures CA/55 and CA/55A

SF/CA 55/ 021 – FORMAT FOR INTERIM PAYMENT CERTIFICATE

Format for Interim Payment Certificate provided in the Paragraph 7.9 of Guidelines for Effective Construction Management (ICTAD/CM/01) published by CIDA should be adopted

Attachments for Procedure CA/56

Please refer to the format SF/CA 55/ 021 for Format for Interim Payment Certificate

Attachments for Procedure CA/57

Please refer to format SF/CA 55/ 021 for Format for Interim Payment Certificate.

Please refer to formats SL/CA 020/ 01 for Letter to Bank for verification of authenticity of the Performance Security, SL/CA 020/ 02 for Letter to Bank demanding payment of guaranteed amount if Performance Security is not extended, SL/CA 020/ 03 for Letter to Bank demanding payment of guaranteed amount if the contract is breached and SL/CA 020/ 03 for Letter to Bank for Authentication of Authorize Signature which should be change to suit the purpose.

Attachments for Procedure CA/58

SF/CA 58/ 01 – FORMAT FOR DAYWORK ORDER

Daywork Order [Project Name]	
Contract : [Name of the Contract] Contract No. :	
Daywork Order No. : DWO [Serial No.]	Date of Issue: [Date of issue]
Variation Order No. : VO [Serial No.]	Date of Issue: [Date of issue]
To : [Name of the Contractor], the Contractor Subject : [Subject of the Daywork Order]	
Variation: This Daywork Order is issued in accordance with Sub-Clause 13.6 of the Conditions of Contract. You are hereby instructed to carry out following varied works:	
Description	
 (signed) The Engineer/Engineer's Assistant	
Enclosed : Drawings [Drawing Nos]	
Original : Contractor Copies : Employer	

SF/CA 58/ 02 – FORMAT FOR DAYWORK RECORDS

Daywork Record Formats provided in Sections A, B and C of Paragraph 7.18 of Guidelines for Effective Construction Management (ICTAD/CM/01) published by CIDA should be adopted.

Attachments for Procedure CA/59

SPECIMEN LETTER : SL/CA 59/ 01 – TERMINATION BY EMPLOYER

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Termination of Contract

We have noted with regret that despite our repeated instructions, you have failed to achieve any progress during recent months and that shows your clear intention not to continue with the performance of the Contract until completion.

Since you have plainly demonstrated your intention not to continue performance of your obligations under the Contract by your actions and inactions, the Employer hereby notify you in accordance with sub paragraph (b) of Sub-Clause 15.2 [Termination by Employer] of the General Conditions of Contract, that the Employer hereby terminate the Contract and expel you from the site with effect from [Date 14 days after the date of this letter].

We also hereby instruct you in accordance with Sub-Clause 15.2:

- (i) To take necessary action immediately, to ensure protection of life and property and Also to ensure safety of the Works.
- (ii) Leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for you, to the Engineer.
- (iii) To assign your following sub contractors to the Employer.

We also request you to provide any assistance required by the Engineer in agreeing or determining Valuation at Date of Termination in accordance with Sub-Clause 15.3.

Please be informed that the Employer will pay you any balance amounts due to you upon recovering any losses, damages and extra costs due to the Employer in accordance with Sub-Clause 15.4 of the General Conditions of Contract.

Thanking you.

Yours faithfully,

[Name of the Chairman]

cc: 1. Secretary, [line ministry]
2. [Chairman, [the Entity]

- 3.Head of Entity
- 4.[Project Director]
- 5.[Team Leader, Supervision Consultants]
- 6.[Funding Agency]
- 7.Attorney General
- 8.Auditor General
- 9.Commissioner General of Inland Revenue

Attachments for Procedure CA/60

SPECIMEN LETTER : SL/CA 60/ 01 – NOTICE OF TERMINATION UPON FORCE MAJEURE

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Termination of Contract Subsequent to Force Majeure

We refer to your Notice of Force Majeure dated [Date] which has been given under Sub-Clause 19.2 [Notice of Force Majeure]

We have noted that the Force Majeure event, for which you have issued the above referred notification, is continuing for [more than 84 days/multiple periods which total more than 140 days], preventing the execution of all the Works in progress substantially.

In the light of the above, we herewith give you our Notice of Termination in accordance with the Sub-Clause 19.6 [Optional Termination, Payment and Release] of the General Conditions of Contract and the termination of this Contract will become effective upon expiry of 7 days of this notice.

Accordingly we hereby advise you to proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Please be informed that the Employer will pay you any amounts due to you after the Engineer issue a Payment Certificate upon determining the value of the works done, in accordance with Sub-Clause 19.6.

Thanking you.

Yours faithfully,

[Name of the Chairman]

- cc:
- 1.Secretary, [line ministry]
 - 2.Chairman,[the Entity]
 - 3.Head of Entity
 - 4.Project Director]
 - 5.Team Leader, Supervision Consultants]
 - 6.Funding Agency]

7. Attorney General
8. Auditor General
9. Commissioner of General Inland Revenue

SPECIMEN LETTER : SL/CA 60/ 02 – NOTICE TO RELEASE FROM PERFORMANCE

[Letter Reference No.]

[Date]

[Name of the Contractor]
[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Notice to Release from Performance

We wish to inform you that [describe the event/circumstance] which was outside the control of the Parties, has arisen making it impossible/[unlawful] for either/both Parties to fulfill its/their contractual obligations/[which, under the law governing the Contract].

Therefore, we herewith issue our Notice to Release from Performance in accordance with Sub-Clause 19.7 [Release from Performance] of the General Conditions of Contract.

Please be informed that the Employer will pay you any balance amounts due to you in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release] of the General Conditions of Contract.

Thanking you.
Yours faithfully,

**[Name of the Chairman]
[Chairman]
[the organization]**

cc:

3. Secretary, [line ministry]
4. [Chairman, [the organization]
5. [GM/DG, [the organization]
6. Addl. GM- [the organization]
7. [Project Director]
8. [Team Leader, Supervision Consultants]
9. [Funding Agency]
10. Attorney General
11. Auditor General
12. Commissioner of General Inland Revenue

Attachments for Procedure CA/61

SPECIMEN LETTER : SL/CA 61/ 01 – REJECTION OF APPLICATION FOR TAKING-OVER CERTIFICATE

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Application for Taking-Over Certificate

We refer to your application dated [Date] to the Engineer for a Taking-Over Certificate for the Works/[Section....], within which you have notified that the Works/[Section....] would be completed and ready for taking over by [Date], in accordance with Sub-Clause 10.1 [Taking Over of the Works and Sections] of the General Conditions of Contract.

We wish to inform you that we have carried out a thorough review jointly with the Employer to ascertain whether the Works/[Section....] have been completed and ready for taking over. Upon above review, we are of the opinion that the Works/[Section....] have not been completed in accordance with the Contract as there were outstanding works and defects which would substantially affect the use of the Works/[Section....] for their intended purpose and therefore it was not ready for taking over. (Please refer to the attached list of outstanding works and defects)

Therefore, we wish to inform you that your application to the Engineer for a Taking-Over Certificate for the Works/[Section....] has been rejected and you are required to complete all outstanding works and remedy all defects which have been identified and included in the attached list of outstanding works and defects, to enable us to issue Taking-Over Certificate for the Works/[Section....].

Thanking you.

Yours faithfully,

Engineer

Enclosed: List of Outstanding Works and Defects

cc:

1. Head of Entity
2. [Project Director]
3. [Funding Agency]

List of Outstanding Works and Defects

S/ No.	Location	Description of Outstanding Works /Defects	Remarks

SPECIMEN LETTER : SL/CA 61/ 02 – TAKING-OVER CERTIFICATE

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Taking-Over Certificate for the Works/[Section....]

We refer to your application dated [Date] to the Engineer for a Taking-Over Certificate for the Works/[Section....], within which you have notified that the Works/[Section....] would be completed and ready for taking over by [Date], in accordance with Sub-Clause 10.1 [Taking Over of the Works and Sections] of the General Conditions of Contract.

We wish to inform you that we have carried out a thorough review jointly with the Employer to ascertain whether the Works/[Section....] have been completed and ready for taking over. Upon above review, we are of the opinion that the Works/[Section....] have been completed in accordance with the Contract on [Date], except for certain outstanding works and defects which would not substantially affect the use of the Works/[Section....] for their intended purpose and therefore it was ready for taking over. (Please refer to the attached list of outstanding works and defects)

Accordingly, we wish to inform you that we herewith issue the Taking-Over Certificate for the Works/[Section....] with effect from [Date], in accordance with Sub-Clause 10.1 [Taking Over of the Works and Sections] of the General Conditions of Contract as you have completed the Works/[Section....] in accordance with the Contract.

Furthermore, we herewith advise you to complete all outstanding works and remedy all defects which have been identified and included in the attached list of outstanding works and defects, within the Defect Notification Period specified under the Contract.

Thanking you.
Yours faithfully,

Engineer

Enclosed: List of Outstanding Works and Defects

cc:

1. Head of Entity
2. [Project Director]
3. [Funding Agency]

List of Outstanding Works and Defects

S/ No.	Location	Description of Outstanding Works /Defects	Date by which Outstandin g Works are to be	Remarks

			completed	
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Attachments for Procedure CA/62

SF/CA 62/01 -REGISTER OF AS BUILT DRAWINGS

[Project Name]

[Contract Name]

Contract No. [Contract No.]

Register of As Built Drawings

Drawing No.	Description of the Drawing	Date of issue	Revision Status	Remarks

Attachments for Procedure CA/63

SPECIMEN LETTER : SL/CA 63/ 01 – NOTIFICATION OF DEFECTS DURING DNP

[Letter Reference No.]

[Date]

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Notification of Defects during Defect Notification Period

We wish to notify you of following defect/defects/damages which has/have been identified during our recent inspection of the Works, in accordance with Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] of the General Conditions of Contract.

Accordingly, we wish to instruct you herewith, to remedy above defect/defects/damages on or before [date] in accordance with Sub-Clauses 11.1 [Completion of Outstanding Work and Remedying Defects] and 11.4 [Failure to Remedy Defects] of the General Conditions of Contract.

Thanking you.

Yours faithfully,

Engineer/[Project Director]

Enclosed: List of Outstanding Works and Defects

cc:

1. Head of Entity
2. [Project Director]
3. [Funding Agency]

Attachments for Procedure CA/64

SL/CA 64/ 03 – PERFORMANCE CERTIFICATE

[Letter Reference No.]

[Date]

Project Manager

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Performance Certificate

We wish to inform you that in accordance with the Sub-Clause 11.9 of the Conditions of Contract, herewith we are issuing you the Performance Certificate for the captioned Contract with effect from [Date], the date on which you have completed your obligations under the Contract.

Thanking you.

Yours faithfully,

Head of the Entity/The Engineer

cc:

1. Chairman, [the organization]
2. [Head of the Entity], [the organization]
3. [Project Director]
4. [Team Leader, Supervision Consultants]
5. [Funding Agency]

Attachments for Procedure CA/65

CL/CA 65/ 01 – CHECK LIST FOR CONTRACT CLOSURE

Check List for Contract Closure

Contract Name : [Contract Name]

Contract No : [Contract No]

S/No.	Activity	Status		Remarks
1.	Contractor cleared the Site, within 28 days upon receiving the Performance Certificate	☐	OK	
		☐	Not OK	
2.	Engineer agreed with the Contractor on his Final Statement in order to issue the Final Payment Certificate	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
3.	Packing and labelling of all project documents and handing over them to a person nominated by the Management	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
4.	Backing up of all information in the Server and the computer network to storage media and handing over them to a person nominated by the Management.	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
5.	Handing over of all buildings, furniture and equipments to persons nominated by the Management.	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
6.	Transfer or terminate all staff involved in the project as directed by the Management.	☐	OK	
		☐	Not OK	
		☐	Not Applicable	
7.	Drafting of the Final Completion Report	☐	OK	
		☐	Not OK	
		☐	Not Applicable	

Project Director/Project Manager

Attachments for Procedure CA/66

CL/CA 66/ 01 – CHECK LIST OF ITEMS TO BE HANDED OVER TO O & M DIVISION

Check List of Items to be Handed Over to O & M Division

Serial No.	Description	Status
1	As-built documents	
2	Operation and Maintenance Guides (if applicable)	

3	Spare parts	
4	Spare materials	
5	Consumables	
6	Tools and accessories	
7	Inspection and test equipments	
8	Warranties for equipment	
9	Catalogues for equipment	
10	Keys including master keys	
11	Documents relating to utility accounts	
12	Contact information of the Contractor, sub contractors and equipment suppliers	
13	Licenses issued by authorities	
14	Computer storage media containing software	

Attachments for Procedure CA/67

SL/CA 67/ 01 – RESPONSE TO A DB REFERRAL BY THE CONTRACTOR

[Letter Reference No.]

[Date]

[Name of the DB Chairman], Chairman/ [Sole Member], DB

[Name of the DB Member], Member, DB

[Name of the DB Member], Chairman, DB

[Contract Name]

[Contract No]

Subject: Employer's Response to Contractor's Referral to DB dated [Date] regarding Dispute No. [Dispute no.] for [Dispute Name]

We refer to the Contractor's DB referral dated [Date], regarding the dispute on the [Dispute Name]

In accordance with the Sub-Clause 20.4 of the General Conditions of the Contract, we hereby submit our response to the Claimant's above referred DAB referral.

1. Introduction:

The Contractor's claim in the referral to the DAB is in respect of [Dispute Name], within which the Contractor contended that he was entitled to be paid an amount of Rs. [Amount claimed] as the payment for [brief description of the Contractor's contention]

2. Employer's Position in Summary :

[Description of the Employer's position in summary]

3. Employer's Position in Detail :

3.1 Contractual and Legal Position

[Counter the Contractor's contentions using contractual and legal provisions]

3.2 Factual Position

[Counter the Contractor's contentions using facts]

4. Issue by Issue Response to the Contractor's Contentions in his DAB Referral

4.1 Claimant's Contention : (Paragraph ... of Referral)

[State the Contractor's position regarding each issue.]

Respondent's Reply

[State the Employer's position regarding each issue of the Contractor.]

4.2 Claimant's Contention : (Paragraph ... of Referral)

[State the Contractor's position regarding each issue.]

Respondent's Reply

[State the Employer's position regarding each issue of the Contractor.]

4.3 Claimant's Contention : (Paragraph ... of Referral)

[State the Contractor's position regarding each issue.]

Respondent's Reply

[State the Employer's position regarding each issue of the Contractor.]

5. Employer's Conclusion:

[State the Employer's conclusion.]

(e.g. The Employer assert that there is no justifiable reason to pay the Contractor a higher rate than the rate specified in the Contract when the work was exactly what has been envisaged in the Contract;. The Employer concludes that the Contractor is not entitled to be paid at the rate for)

Thanking you.

Yours faithfully,

[Name of the Project Director]

[Name of the Project]

[Name of the organization]

cc:

1. [Contractor]
2. [Head of the relevant entity], [Name of the Entity]
3. [Team Leader, Supervision Consultants]

Attachments to the Employer's Response

LIST OF ATTACHMENTS

Attachment No.	Description	Page No. in the Contract
1	Extract of Sub-Clause of the General Conditions of Contract	
2		

SL/CA 67/ 02 - Employer's Referral of a Dispute to DB

[Letter Reference No.]

[Date]

[Name of the DB Chairman], Chairman/ [Sole Member], DB

[Name of the DB Member], Member, DB

[Name of the DB Member], Chairman, DB

[Contract Name]

[Contract No]

Subject: Employer's Referral of Dispute No. [Dispute no.] for [Dispute Name]
to DB for a Decision

We hereby refer the Dispute No. [Dispute no.] for [Dispute Name] to you for a decision, in accordance with the Sub-Clause 20.4 of the General Conditions of the Contract.

1. Introduction:

[brief description of the background to the dispute]

2. Decisions Sought from the DB:

[list decisions required from the DB with regard to the dispute]

3. Employer's Position in Summary :

[Description of the Employer's position in summary]

4. Employer's Position in Detail :

4.1 Contractual and Legal Position

[state contractual and legal provisions on which your contentions are based]

4.2 Factual Position

[state factual grounds on which your contentions are based]

5. Employer's Conclusion:

[State the Employer's conclusion.]

(e.g. The Employer concludes that he is entitled for Delay damages for the period as the said delay was due to a reason for which the Contractor was responsible.)

Thanking you.

Yours faithfully,

[Name of the Project Director]

Project Director

[Name of the Project]

[Name of the organization]

cc:

6. [Contractor]
7. [Head of the Entity], [the organization]
8. [Team Leader, Supervision Consultants]

Attachments to the Employer's Referral

LIST OF ATTACHMENTS

Attachment No.	Description	Page No. in the Contract
1	Extract of Sub-Clause of the General Conditions of Contract	
2		
3		

SL/CA 67/ 03 – NOTICE OF DISSATISFACTION

[Letter Reference No.]

[Date]

Project Manager

[Name of the Contractor]

[Address of the Contractor]

[Contract Name]

[Contract No]

Subject: Notice of Dissatisfaction with DB's Decision dated [Date] regarding Dispute No. [Dispute no.] for [Dispute Name]

We refer to the DB's decision dated [Date] regarding the captioned dispute.

The Employer, the **[Name of the Employer]** , hereby gives its Notice of Dissatisfaction with the above mentioned DB's decision in accordance with Sub-Clause 20.4 of the General Conditions of Contract.

Part of the Decision for which Dissatisfaction is Notified

We dispute the following statements in the DB's aforementioned decision;

- 1.
- 2.
- 3.

Reasons for Dissatisfaction

The Employer's dissatisfaction with the above DB's decision on the captioned issues is due to the following reasons:

- a)
- b)
- c)

Furthermore, in the light of above facts, the Employer reiterates that the DB's decision was based on wrong interpretation of the Contract and inaccurate contentions and therefore items 1,and of the DAB's decision are not reasonable and are not contractually valid.

The Employer reiterates that some parts of the DAB's decisions which have been highlighted above, are not acceptable due to the reasons stated and the Employer hereby gives his Notice of Dissatisfaction in accordance with the Sub-Clause 20.4 of the General Conditions of Contract.

The Employer further asserts that in accordance with the Sub-Clause 20.4 of the General Conditions of Contract, the DB's aforesaid decision would not become final and binding due to this Notice of Dissatisfaction.

Thanking you.

Yours faithfully,

[Name of the Chairman]

cc:

1. [Head of the Entity], [the organization]
2. [Project Director]
3. [Team Leader, Supervision Consultants]
4. [Funding Agency]

Attachments for Procedure CA/68

SL/CA 68/ 01 – LETTER TO ATTORNEY GENERAL SEEKING HIS OPINION

Hon, Attorney General
Attorney General's Department
[Project Name]
[Contract Name]
Contract No. [Contract No.]
Opinion on Attempting for Amicable Settlement

Contractor has referred following disputes to the DB, and the DB has given his decision in favour of the Contractor. We have issued Notices of Dissatisfaction to the Contractor as those decisions of the DB were not acceptable to us.

DAB Reference	Title
[Dispute No.]	[Dispute Title]
[Dispute No.]	[Dispute Title]
[Dispute No.]	[Dispute Title]

We wish refer these disputes to the Standing Cabinet Appointed Review Committee for evaluation, in accordance with the Cabinet Paper No. 11/0811/504/072 on Settlement of Disputes in Relation to Contract Management.

Therefore, I appreciate if you could provide us your views on attempting amicable settlement of above disputes. Accordingly, I herewith submit following information to you for evaluation.

- a. The Referrals of Disputes by the contractor
- b. Submissions to DB by both parties
- c. Records of DB hearing
- d. Decisions of DB
- e. Notices of Dissatisfaction
- f. Views of the Hon. Attorney General
- g. Views of relevant Heads of Departments

If you need any further information, please contact [Name of the Project Director] at telephone number [Telephone No.].

I appreciate your early response.

Thanking you.
Yours faithfully,
Head of the Entity

cc: 1. Secretary, [Line Ministry]
2.[Chairman], [the Entity]
3. Hon. Attorney General
4. [Project Director]
5. [Team Leader, Supervision Consultants]

6. [Funding Agency]

SL/CA 68/ 02 – LETTER TO STANDING CABINET APPOINTED REVIEW COMMITTEE

Chairman
Standing Cabinet Appointed Review Committee

[Project Name]
[Contract Name]
Contract No. [Contract No.]
Proposal for Amicable Settlement

Contractor has referred following disputes to the DB, and the DB has given his decision in favour of the Contractor. We have issued Notices of Dissatisfaction to the Contractor as those decisions of the DB were not acceptable to us.

DAB Reference	Title
[Dispute No.]	[Dispute Title]
[Dispute No.]	[Dispute Title]
[Dispute No.]	[Dispute Title]

Subsequently, we have sought the opinion of the AG's Department and they are of the view that our issuing of the Notices of Dissatisfaction to the Contractor was reasonable.

I have reviewed an assessment of the issues in dispute submitted by the relevant Project Director together with the opinion of the AG's Department and I am of the view that these disputes should be referred for amicable settlement. Accordingly, I herewith submit following information to you for evaluation by the Standing Cabinet Appointed Review Committee in accordance with Cabinet Paper No. 11/0811/504/072 on Settlement of Disputes in Relation to Contract Management.

- a. The Referrals of Disputes by the contractor
- b. Submissions to DB by both parties
- c. Records of DB hearing
- d. Decisions of DB
- e. Notices of Dissatisfaction
- f. Views of the Hon. Attorney General
- g. Views of relevant Heads of Departments

If you need any further information, please contact [Name of the Project Director] at telephone number [Telephone No.].

I appreciate your early response.

Thanking you.

Yours faithfully,

[Head of the relevant entity]
[Name of the Entity]

cc:

1. Secretary, [Line Ministry]
2. [Chairman], [the organization]
3. Hon. Attorney General
4. [Project Director]
5. [Team Leader, Supervision Consultants]
6. [Funding Agency]

SL/CA 68/ 03 – MINUTES OF AMICABLE SETTLEMENT MEETING

[Project Name]

[Contract Name]

Contract No. [Contract No.]

Minutes of Amicable Settlement Meeting held on [Date], at the [Venue]

Amicable Settlement committee of the Ministry of [Name of the Line Ministry]

Participants

[Name of the Chairman, Amicable Settlement Committee]	- [Position of the Chairman] Chairman of the Amicable Settlement Committee
[Name of the Member, Amicable Settlement Committee]	- [Position of the Member] Member of the Amicable Settlement Committee
[Name of the Member, Amicable Settlement Committee]	- [Position of the Member] Member of the Amicable Settlement Committee

Representing Employer

[Name]	- Project Director, [Project Name]
[Name]	- [Position]
[Name]	- [Position]
	- [Position]

Representing the Contractor

[Name]	- [Contractor's representative]
[Name]	- [Position]
[Name]	- [Position]

Representing the Engineer

[Name]	- [Engineer's Representative/Assistant]
[Name]	- [Position]

[Name]

- [Position]

Pursuant to Sub Clause 20.4 of the General Conditions of Contract, the Contractor, [Name of the Contractor] requested by his letter [Letter Ref:] dated [Date of the letter], that the parties should attempt to settle the following disputes for which DB has given their decision, and a party/parties has/have issued Notice of Dissatisfactions:

DAB Reference	Title
[Dispute No.]	[Dispute Title]
[Dispute No.]	[Dispute Title]
[Dispute No.]	[Dispute Title]

Above disputes were taken up for discussion at the meeting of the Amicable Settlement Committee. The following is a record of the discussions that took place.

Matters Discussed:

1. [Dispute No.] - [Dispute Title]

The Contractor has briefed the Amicable Settlement Committee (ASC) on the dispute and his position regarding the dispute. The Contractor informed the ASC that he is entitled for an amount of Rs, [Amount Claimed] as additional cost with regard to this claim

The Employer briefed the ASC on his position regarding the claim and reasons for his dissatisfaction for the DB's decision.

ASC has sought certain clarifications from both parties
The Decision of ASC for [Dispute No.] - [Dispute Title]

[ASC's Decision]

(e.g. ASC decided that the present method of payment followed by the Engineer will not be changed.)

2. [Dispute No.] - [Dispute Title]

The Contractor has briefed the Amicable Settlement Committee (ASC) on the dispute and his position regarding the dispute. The Contractor informed the ASC that he is entitled for an amount of Rs, [Amount Claimed] as additional cost with regard to this claim

The Employer briefed the ASC on his position regarding the claim and reasons for his dissatisfaction for the DB's decision.

ASC has sought certain clarifications from both parties

The Decision of ASC for [Dispute No.] - [Dispute Title]

[ASC's Decision]

(e.g. ASC decided to follow the DAB decision rejecting the Contractor's claim)

Members:

- i [Name of the Chairman, ASC]
- ii [Name of the Member, ASC]
- iii [Name of the Member, ASC]

Agreed

.....
 [Name of the Contractor's representative]
 [Position of the Contractor's representative]
 [Name of the Contractor]

Minutes prepared by:

.....
 [Name][Position][Organization]

Attachments for Procedure CA/69

SL/CA 69/ 01 – NOTICE OF ARBITRATION

To: Project Manager
 [Name of the Contractor]
 [Address of the Contractor]

Notice of Arbitration

In the Matter of an Arbitration between [Name of Employer] (Claimant) and
[Name of the Contractor] (Respondent)

Claimant : [Name and Address]

Respondent: [Name of the Contractor] (Contractor)
 [Address of the Contractor]

Contract : Contract No. [Contract No.]for[Name of the Contract] dated [Date of the Contract]

Arbitration Agreement:

Arbitration Agreement is consisted of following Sub-Clauses/provisions in the Contract:

1. Sub-Clause 20.6 [Arbitration] (subject to amendments in 2 and 3 below)
 Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:
 - (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,
 - (b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
 - (c) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing 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.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

2. Sub-Clause 20.6 of Particular Conditions (superseded by amendments in 3 below)
Sub-Clause 20.6 of Particular Conditions has superseded parts of the Sub-Clause 20.6 of the General Conditions of the Contract.
3. Item 7 of the Annex 3 of the Contractor's letter P230605– GF/CHG dated 5th October 2007.
Provisions in Item 7 of the Annex 3 of the Contractor's letter P230605– GF/CHG dated 5th October 2007 have superseded Sub-Clause 20.6 of Particular Conditions and Sub-Clause 20.6 of General Conditions of Contract.
Sub-Clause 20.6 of General Conditions of Contract has been amended in the Particular Conditions and subsequently amended again in the Item 7 of the Annex 3 of the Contractor's letter P230605– GF/CHG dated 5th October 2007 (page 14 of the Contract document) accepting the award of the Contract and in Item 7 of the Annex 3 of the Claimant (Employer)'s letter of acceptance T&C/WWDP/RM&JE/221/C1/2006 dated 27th September 2007 (page 23 of the Contract document) to read as "The dispute shall be finally settled in terms of the Arbitration Act No.11 of 1995 and the arbitration should be under the UNCITRAL Rules and take place in Colombo, Sri Lanka."
4. Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision], 6th paragraph of which states "Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause."
5. Sub-Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment]
If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:
 - (a) Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply, and
 - (b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].
6. Sub-Clause 1.4 [Law and Language]
The Contract shall be governed by the law of the country (or other jurisdiction) stated in the Appendix to Tender.

If there are versions of any part of the Contract which are written in more than one language, the version which is in the ruling language stated in the Appendix to Tender shall prevail.

The language for communications shall be that stated in the Appendix to Tender. If no language is stated there, the language for communications shall be the language in which the Contract (or most of it) is written.

General Nature of the Claim/Dispute:

1. The Contract for [Name of the Contract], was awarded to [Name of the Contractor] and the Contract was signed on [Date of the Contract]. The Contractor has provided his Performance Guarantee from [Name of the Bank] of [Country of the Bank] through its branch in Sweden. The Works in the Contract was commenced in 1st February 2008 and progressed without any interruptions but behind the agreed schedule.
2. When the Works in the Contract, was about 90% completed, lead partner of the Joint Venture constituting the Respondent [Name of the Contractor], was adjudicated bankrupt thus creating complication in management of the contract due to controlling of the lead partner's bank accounts by trustees appointed by the court as all bank accounts which were used for transactions related to the Contract, were owned by the lead partner. Also all sub contracts and supply contracts have not been signed with the Joint Venture, but with the lead partner, making the execution of the project more complicated if not impossible. When the Claimant was trying to help the Respondent by acceding to some of his requests for extra-contractual concessions to complete the Works (such as reducing the amount of performance guarantee), the Respondent attempted to terminate the Contract with effect from 31st October 2013, invoking provisions under Sub-Clause 16.2 of the General Conditions of Contract, alleging that the Claimant became insolvent. The Claimant while rejecting the Respondent's entitlement to terminate the Contract under the Sub-Clause 16.2 of GCC, terminated the Contract with effect from 15th November 2013 by notifying in accordance with sub paragraph (b) of Sub-Clause 15.2 [Termination by Employer] of the General Conditions of Contract, as the Respondent abruptly stopped execution of the Works with effect from 31st October 2013 and as it was clear that the Respondent was not going to continue the performance of the Contract until completion. Therefore a dispute has arisen with regard to whether the Claimant or the Respondent is entitled for termination of the Contract.
3. Upon the termination of the Contract, the Claimant demanded the [Name of the Bank] which issued the Respondent's Performance Guarantee, to pay the amount guaranteed under the said Performance Guarantee. [Name of the Bank] Bank, instead of paying the guaranteed amount, advised the Claimant (Employer) to return the Performance Guarantee to the Respondent. Since the said Performance Guarantee is an unconditional on-demand guarantee which states "we undertake to pay you, upon your first written demand, and without cavil or argument, any sum or sums within the limits of USD 9,065,048.50 as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein", the said bank should have paid the Claimant upon his demand to pay. It is clear that the said bank's refusal to honour the Performance Guarantee was on the instructions from the Respondent. Therefore

another dispute has arisen with regard to the payment of amount guaranteed under the Performance Guarantee.

4. At time of termination the Respondent's unfulfilled contractual obligations included:
- (a) Works which were partially completed,
 - (b) Works yet to be commenced,
 - (c) Rectification/replacement of defective works
 - (d) Testing at completion of works
 - (e) Testing and commissioning of Plants
 - (f) Training of staff involved in operation and maintenance of Plants
 - (g) Operation and maintenance of Plants for a period of 12 months
 - (h) Rectification or compensating for of damages suffered by third parties, which remained unsettled.
 - (i) Rectification or compensating for of damages to utilities, which remained unsettled.
 - (j) Rectification or compensating for of damages to roads and road structures, which remained unsettled.

Interim Relief Sought:

The Claimant requests the Arbitral Tribunal to direct the Respondent to refrain from disposing any Goods (including materials, Contractor's Equipment and Temporary Works) without the specific approval of the Claimant in order to maintain the status quo, in accordance with [insert rules of procedure as may be relevant to the Contract Agreement for example] Article 26 of the UNCITRAL Arbitration Rules.

Relief/Remedy Sought:

1. The Claimant requests the Arbitral Tribunal to declare that the Claimant's termination in accordance with sub paragraph (b) of Sub-Clause 15.2 [Termination by Employer] of the General Conditions of Contract, with effect from 15th November 2013 is Contractually valid and to declare that the Respondent's purported termination under the Sub-Clause 16.2 [Termination by Contractor] of the General Conditions of Contract, with effect from 31st October 2013 is Contractually invalid.
2. The Claimant requests the Arbitral Tribunal to declare that the Respondent (Contractor) has breached the Contract by instructing its bank ; Danske Bank to refuse payment guaranteed under the Performance Security, when the Claimant (Employer) demanded the said payment and the Claimant further requests the Arbitral Tribunal to direct the Respondent :

- a. to instruct his bank () to pay the Claimant an amount of [] as the amount guaranteed under the Performance Guarantee: or
 - b. to pay the Claimant an amount of []
3. The Claimant requests the Arbitral Tribunal to declare that :
 - a. the Claimant (Employer) is entitled to complete the Works itself and/or arrange for any other entities to do so
 - b. The Claimant (Employer) and entities arrange by it are entitled to use any Goods (including materials, Contractor's Equipment and Temporary Works), Contractor's Documents and other design documents made by or on behalf of the Contractor.
4. The Claimant requests the Arbitral Tribunal to direct the Respondent (Contractor) to:
 - a. Refrain from disposing any Goods without the specific approval of the Claimant
 - b. Hand over all Goods (including materials, Contractor's Equipment and Temporary Works) required by the Claimant in completing the Works.
5. The Claimant requests the Arbitral Tribunal to direct the Respondent to :
 - a. Pay the Claimant losses and damages suffered or to be suffered by it and any additional/extra costs incurred or to be incurred by it in completing the Works.
 - b. Indemnify the Claimant of all claims for losses and damages suffered by third parties, road authorities and utility agencies by rectifying such losses/damages or paying compensation for such damages in lieu of rectification.
6. The Claimant) requests the Arbitral Tribunal to direct the Respondent (Contractor) to pay the Claimant costs of this arbitration
7. Any other relief the Arbitral Tribunal may think reasonable.

Appointment of Arbitrators

We hereby appoint **[Names of proposed Arbitrator]** as one of the co-arbitrators [if it's a sole arbitrator state so] in accordance with [insert rules of procedure for example] the Item 4(c) of [Article 3 and Article 9 of the UNCITRAL Rules and we hereby request you to appoint a co-arbitrator in accordance with the Item 2(d) of Article 4 and Article 9 of the UNCITRAL Rules as may be relevant to the Contract Agreement.

Thanking you.

Yours faithfully,

[Name of the Chairman]

Chairman

[The organization]

cc:

1. [Head of the Entity], [the organization]
2. Hon. Attorney General
3. [Project Director]
4. [Team Leader, Supervision Consultants]

5. [Funding Agency]
6. [Name of the Arbitration Institution (only if an Arbitration Institution is involved)]

SL/CA 69/ 02 – STATEMENT OF CLAIM

To:

[Name of the Chairman of the Arbitral Tribunal] Chairman, Arbitral Tribunal

[Name of the Co-arbitrator if any] Co-arbitrator

[Name of the Co-arbitrator if any] Co-arbitrator

In the Matter of an Arbitration between [name of entity] (Claimant) and [Name of the Contractor] (Respondent) under (insert rules of procedure relevant to the Contract Agreement(rules

Claimant : [Insert Name and Address]

Respondent: [Name of the Contractor]
[Address of the Contractor]

Contract : Contract No. [insert Contract No.]for[Name of the Contract] dated [Date of the Contract]

Background:

1. The Contract for [Name of the Contract], was awarded to [Name of the Contractor] and the Contract was signed on [Date of the Contract]. The Contractor has provided his Performance Guarantee from [Name of the Bank] of [Country of the Bank] through its branch in Sweden. The Works in the Contract was commenced in 1st February 2008 and progressed without any interruptions but behind the agreed schedule.
2. When the Works in the Contract, was about 90% completed, lead partner of the Joint Venture constituting the Respondent (Contractor), [Name of the Contractor], was adjudicated bankrupt thus creating complication in management of the contract due to controlling of the lead partner's bank accounts by trustees appointed by the court as all bank accounts which were used for transactions related to the Contract, were owned by the lead partner. Also all sub contracts and supply contracts have not been signed with the Joint Venture, but with the lead partner, making the execution of the project more complicated if not impossible. When the Claimant (Employer) was trying to help the Respondent (Contractor) by acceding to some of his requests for extra-contractual concessions to complete the Works (such as reducing the amount of performance guarantee), the Respondent (Contractor) attempted to terminate the Contract with effect from 31st October 2013, invoking provisions under Sub-Clause 16.2 of the General Conditions of Contract, alleging that the Claimant (Employer) became insolvent. The Claimant (Employer), while rejecting the Respondent (Contractor)'s entitlement to terminate the Contract under the Sub-Clause 16.2 of GCC, terminated the Contract with effect from 15th November 2013 by notifying in accordance with sub paragraph (b) of Sub-Clause 15.2 [Termination by Employer] of the General Conditions of Contract, as the Respondent (Contractor) abruptly stopped execution of the Works with effect from

31st October 2013 and as it was clear that the Respondent (Contractor) was not going to continue the performance of the Contract until completion. Therefore a dispute has arisen with regard to whether the Claimant (Employer) or the Respondent (Contractor) is entitled for termination of the Contract.

3. Upon the termination of the Contract, the Claimant (Employer) demanded the [Name of the Bank] which issued the Respondent's (Contractor's) Performance Guarantee, to pay the amount guaranteed under the said Performance Guarantee. [Name of the Bank] Bank, instead of paying the guaranteed amount, advised the Claimant (Employer) to return the Performance Guarantee to the Respondent (Contractor). Since the said Performance Guarantee is an unconditional on-demand guarantee which states "we undertake to pay you, upon your first written demand, and without cavil or argument, any sum or sums within the limits of USD 9,065,048.50 as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein", the said bank should have paid the Claimant (Employer) upon his demand to pay. It is clear that the said bank's refusal to honour the Performance Guarantee was on the instructions from the Respondent (Contractor). Therefore another dispute has arisen with regard to the payment of amount guaranteed under the Performance Guarantee.
4. At time of termination the Respondent's (Contractor's) unfulfilled contractual obligations included:
 - (a) Works which were partially completed,
 - (b) Works yet to be commenced,
 - (c) Rectification/replacement of defective works
 - (d) Testing at completion of works
 - (e) Testing and commissioning of Plants
 - (f) Training of staff involved in operation and maintenance of Plants
 - (g) Operation and maintenance of Plants for a period of 12 months
 - (h) Rectification or compensating for of damages suffered by third parties, which remained unsettled.
 - (i) Rectification or compensating for of damages to utilities, which remained unsettled.
 - (j) Rectification or compensating for of damages to roads and road structures, which remained unsettled.

Interim Relief Sought:

5. The Claimant (Employer) requests the Arbitral Tribunal to direct the Respondent (Contractor) to refrain from disposing any Goods (including materials, Contractor's Equipment and Temporary.

Claimants (Employer) Position:

6. The Claimant (Employer) wishes to assert that the Respondents purported termination is not contractually valid as his allegation to the effect that Employer became insolvent/bankrupt, base on which he tried to terminate the contract was not legally valid as:
 - a. In accordance with the Sri Lankan law only a court has authority to declare an entity become insolvent/bankrupt.
 - b. There is no provision in the Sri Lankan law, NWSDB, as a state entity, to become insolvent/bankrupt.
7. The Claimant (Employer) rejects the Respondents allegation that Claimant had failed to respond to his request for Employer's financial arrangements as the Claimant responded to that request through the letter [Letter No.] dated [Date] which is attached to this statement as WB/01. Furthermore, the Claimant wishes to point out that he has proved that his financial arrangements were intact by making an interim payment to the Respondent subsequent to his request to provide Employer's financial arrangements.
8. The Claimant (Employer), without prejudice to his above position, asserts that, even if the Claimant failed to provide evidence for his financial arrangements, termination of the Contract base on that grounds require Respondent to give 14 day notice prior to such termination, which the Respondent failed to carry out.
9. The Claimant (Employer) reiterates that the Respondents purported termination of the Contract was contractually and legally invalid as shown above.
10. The Claimant (Employer) emphasizes that his termination of the Contract was the legally and contractually valid termination as it was valid grounds in accordance with the Contract.

Relief/Remedy Sought:

11. The Claimant (Employer) requests the Arbitral Tribunal to declare that the Claimant's (Employer's) termination in accordance with sub paragraph (b) of Sub-Clause 15.2 [Termination by Employer] of the General Conditions of Contract, with effect from 15th November 2013 is Contractually valid and to declare that the Respondent's (Contractor's) purported termination under the Sub-Clause 16.2 [Termination by Contractor] of the General Conditions of Contract, with effect from 31st October 2013 is Contractually invalid.
12. The Claimant (Employer) requests the Arbitral Tribunal to declare that the Respondent (Contractor) has breached the Contract by instructing its bank ; Danske Bank to refuse payment guaranteed under the Performance Security, when the Claimant (Employer) demanded the said payment and the Claimant (Employer) further requests the Arbitral Tribunal to direct the Respondent (Contractor):
 - a. to instruct his bank (Danske Bank) to pay the Claimant (Employer) an amount of USD 9,065,048.50 as the amount guaranteed under the Performance Guarantee: or

- b. to pay the Claimant (Employer) an amount of USD 9,065,048.50
13. The Claimant (Employer) requests the Arbitral Tribunal to declare that :
- a. the Claimant (Employer) is entitled to complete the Works itself and/or arrange for any other entities to do so
 - b. The Claimant (Employer) and entities arrange by it are entitled to use any Goods (including materials, Contractor's Equipment and Temporary Works), Contractor's Documents and other design documents made by or on behalf of the Contractor.
14. The Claimant (Employer) requests the Arbitral Tribunal to direct the Respondent (Contractor) to:
- a. Refrain from disposing any Goods without the specific approval of the Claimant (Employer).
 - b. Hand over all Goods (including materials, Contractor's Equipment and Temporary Works) required by the Claimant (Employer), in completing the Works.
15. The Claimant (Employer) requests the Arbitral Tribunal to direct the Respondent (Contractor) to :
- a. Pay the Claimant (Employer), losses and damages suffered or to be suffered by it and any additional/extra costs incurred or to be incurred by it in completing the Works.
 - b. Indemnify the Claimant (Employer) of all claims for losses and damages suffered by third parties, road authorities and utility agencies by rectifying such losses/damages or paying compensation for such damages in lieu of rectification.
16. The Claimant (Employer) requests the Arbitral Tribunal to direct the Respondent (Contractor) to pay the Claimant (Employer) costs of this arbitration
17. Any other relief the Arbitral Tribunal may think reasonable.

Documents Annexed to the Statement of Claim

18. Documents marked "C1" to "C..."

[Name of the Chairman]/ [Name of the Counsel]

Chairman/[Counsel]
[The Entity]

cc:

[Name of the Contractor] **(Respondent)**

[Name of the Arbitration Institution (only if an Arbitration Institution is involved)]

SL/CA 69/ 03 – STATEMENT OF DEFENCE OF THE RESPONDENT

CASE NO: [Case No. if Institutional Arbitration only]

IN THE MATTER OF AN ARBITRATION

UNDER THE [insert name of selected rules of procedure] RULES

STATEMENT OF DEFENCE

To:

[Name of the Chairman of the Arbitral Tribunal] Chairman, Arbitral Tribunal

[Name of the Co-arbitrator if any] Co-arbitrator

[Name of the Co-arbitrator if any] Co-arbitrator

In the Matter of an Arbitration [insert name of organization] (Claimant) and [Name of the Contractor] (Respondent)

Claimant : [Insert Name and address]

Respondent: [Name of the Contractor] (Contractor)
[Address of the Contractor]

Contract : Contract No. [Contract No.] [Name of the Contract] dated [Date of the Contract]

Introduction:

1. The Respondent (Employer) wish to inform that he would respond to each and every paragraph of the Claimant's Statement of Claim (SOC), referring to paragraph numbers but using his own series of paragraph numbers.
2. If the Respondent needs to refer to any supporting documents which is not marked by the Claimant, those documents would be marked and attached to the attached Statement of Defence. In case the Respondent needs to rely on a document already submitted by the Claimant, the Respondent will refer to that document using the serial number assign to that document by the Claimant.

Respondent's Position on Claimant's Contentions in his Statement of Claim

3. The Respondent admits the content of Paragraph 1 of the SOC that a Contract for [Name of the Contract], was awarded to the Claimant and a valid contract exists between the Claimant and the Respondent.
4. Responding to the Paragraphs 1 to 3 of the SOC, the Respondent rejects the Claimants assertion that there was a delay of 30 days in handing over the possession of the site to the Claimant

5. While rejecting the contention of the Claimant in Paragraph 4 of the SOC that he is entitled for an EOT of 30 days, the Respondent emphasize that the delay was due to unavailability of adequate resources for which the Claimant was responsible.
6. The Respondent wishes to point out that the Claimant is trying to mislead the Honorable Tribunal by providing wrong information in Paragraph 5 of the SOC that he has notified the Engineer and as evidence we submit the Engineer's letter [Ref: No.] dated 11th December 2012 marked as NWSDB/02.
7. Accordingly the Respondent out rightly reject the Claimant's contention in Paragraph 6 of the SOC that he is entitled for an EOT and/or associated prolongation costs.

Counter Claims:

8. The Respondent asserts that he is entitled for Liquidated/Delay Damages amounting to Rs. [Amount] for the Claimant's 30 days delay in completing the Works.

Relief/Remedy Sought:

9. 1. The Respondent requests the Honourable Arbitral Tribunal to declare that the:
 - a) The Claimant is not entitled for any EOT and/or prolongation costs with regard to his claims referred for this arbitration.
 - b) The Claimant is not entitled for any other costs whatsoever including costs of this arbitration and any interest for delayed payments
2. The Respondent requests the Honourable Arbitral Tribunal to direct the Claimant:
 - i. to pay the Respondent an amount of Rs. [Amount] as Liquidated/Delay Damages for the Claimant's 30 days delay in completing the Works.
 - ii. To pay the costs incurred by the Respondent in this arbitration.

[Name of the Chairman]/ [Name of the Counsel]
Chairman/[Counsel]
[The organization]

cc:

[Name of the Contractor] (Claimant)

[Name of the Arbitration Institution]

SL/CA 69/ 04 – Statement of Reply of the Claimant

To:

[Name of the Chairman of the Arbitral Tribunal] Chairman, Arbitral Tribunal

[Name of the Co-arbitrator] Co-arbitrator

[Name of the Co-arbitrator] Co-arbitrator

STATEMENT OF REPLY OF THE CLAIMANT

In the Matter of an Arbitration between [name of the entity] (Claimant) and [Name of the Contractor] (Respondent)

Claimant : Name and Address of Entity

Respondent: [Name of the Contractor]
[Address of the Contractor]

Contract : Contract No. [Contract No.]for[Name of the Contract] dated [Date of the Contract]

STATEMENT OF REPLY OF THE CLAIMANT ABOVE NAMED

- 1) The Claimant denies all and singular the averments contained in the Statement of Defence save and except for those that are hereinafter specifically admitted.
- 2) Responding to the averments contained in paragraphs [.....] of the Statement of Defence, the Claimant reiterates the averments contained in paragraphs [...] of the Statement of Claim.
- 3) Responding to paragraph [] of the Statement of Defence, the claimant states that[was in fact due from the Respondent to the Claimant at the time of termination of the Contract Agreement].
- 4) While disputing the matter stated in paragraphs [.....] of the Statement of Defence, the Claimant puts the Respondent to the strict proof thereof and reiterates the averments contained in paragraphs [.....] in the Statement of Claim.
- 5) The Claimant further states that it is unaware of the correctness of the matters stated under paragraphs [.....] contained in the Statement of Defence and puts the Claimant to the strict proof thereof.
- 6) By way of further reply, the Claimant states that –
 - a) The Respondent has wrongfully and wilfully defaulted the payment ofdue to the Claimant.

WHEREFORE the Claimant prays that the Tribunal be pleased to:

- a) Reject or dismiss the Statement of Defence of the Respondent;
- b) Grant the relief prayed for in the Statement of Claim; and
- d) For costs and any other relief as to this Tribunal may deem fit, just and equitable.