

Standard Bid Documents  
For General Competitive Tenders  
For the General of Executing General Works

## **Introduction**

These tender documents of the government contracts were prepared to execute the general works thru general competitive tenders for projects which the employer has its full technical documents (plans, bills of quantities and technical specifications). The contractor's responsibility shall be the supplying of implementation requirements, execution of works, erection, conducting tests and acceptance tests, and deliver works to the employer and maintenance.

## **A Brief Description:**

These standard bid documents of executing the general works are prepared to depend on the limited tenders if the pre-qualification is carried out, and we list hereunder a brief description of these documents.

The standard documents of executing the works include the following:

### **Part One - Contracting Procedures**

Contains the following sections:

#### **Section One– Instructions to Bidders**

This section contains the information related to contracting procedures in order to facilitate the mission of bidders to prepare their bid, and also include the information of procedures of submitting, opening and evaluation of bids, and the information of contract awarding. This section contains conditions that cannot be amended by the bidder.

#### **Section Two - Bid Data Sheet**

This section contains the conditions of each tender and they are considered complementary to the information and requirements stated in section one (Instructions to Bidders).

#### **Section Three - Evaluation and Comparison Criteria to evaluate the tenders whose bidders were not pre-qualified.**

This section contains the adopted criteria to determine the lowest bid price, along with fulfilling the required qualifications by the bidder, which confirm his eligibility to implement the contract.

#### **Section Four - Bid Forms**

This section contains the forms that the bidders shall fill out and submit as part of bid.

**Section Five- Eligible Countries**

This section contains the information of the eligible countries:

**Part Two - Work Requirements**

This section contains the following:

**Section Six– Work Requirements**

This section contains the specifications, plans, bill of quantities and additional information that describe the works required to be executed.

**Part Three – Contract Conditions and Contract Forms**

It contains the following sections:

**Section Seven– General Conditions**

This section contains the general conditions that must be applied in all contracts and no amendment on texts of these conditions is allowed by the bidder.

**Section Eight – Special Conditions**

This section consists of chapter one: includes the contract data that contains the special data of contract, and chapter two: includes the special condition of each contract. The contents of this section are considered complementary to the general conditions and shall be prepared by the employer.

**Section Nine– Annex to Special Conditions /Contract Forms**

This section contains the forms that when filled out will form a part of the contract, and the forms of bank guarantee for the good performance and the bank letter of guarantee for the advance payment shall be filled out by the winner bidder only after the award of contract.

## **Bid Documents**

Issue on

For executing the works

(Insert Introduction of works)

**General** Competitive Tender No.: Insert number of Tender

Project: Insert Name of Project

Employer: Insert employer's name

### **Advertisement Form/ Invitation to Submit a Bid**

Enter the Name of Contracting Party's Country/Employer

Enter the Name of Contracting Party/Employer

No.:

Date:

To: enter the name of bidder

Sub. / enter the number and name of tender

- 1- Enter contracting party's name (employer) is pleased to invite the qualified and experienced bidders to submit their bids for special work (enter a brief description for the works to be implemented).
- 2- The invitation document for bid submission that follows the announcement of the general tender of this project, which was published in the national newspapers enter the names of newspapers and their dates and numbers, along with the date of publication in DG. Market and UNDP online).
- 3- The work will be carried out in accordance with the mechanism adopted for the international general tenders that permit all the bidders of the eligible countries to participate therein as specified in the explanatory bulletin issued by the United Nations (regarding the definition of the eligible country)
- 4- The qualified bidders and willing to obtain additional information must contact enter the name of contracting party and email of the employee in charge enter working hours as shown in the instruction to bidders.
- 5- The needed qualification requirements (enter a list of the technical, financial and legal requirements etc. Are the bids subject to giving preference to the local bidders (enter yes or no also enter the preference percentage of bidder.
- 6- The bidders who are interested in purchasing bid documents in enter document language after submitting a written request to the address specified in the instruction to bidders and after paying the selling value of document enter the amount in Dinars or enter the value in other exchangeable currency. The payment method will be thru (enter payment method and the documents will be sent by enter method of sending the documents.
- 7- The bids are delivered to the following address specify the address mentioned in the instructions to bidders in the specified time enter time and date of submission the submission thru email enter what is allowable and non-allowable. The late bids will be rejected and the bids will be opened in the presence of the bidders or their representatives who would like to attend in the following address enter the address specified in the instructions to bidders in the time and date enter time and date. All bids shall include bid guarantee enter bank letter of guarantee or certified check with an amount of enter the amount in Dinars or in the equivalent exchangeable currency.
- 8- The addresses mentioned above are enter the detailed address/addresses including the Contracting Party (Employer ), Specialized Division, Name of Person in Charge, Building No., St. No., District No., City, Country, enter email if the it is allowed to submit bids electronically).

**Note:** The contracting party can add additional data that are suitable with the value of the tender provided it does not conflict with the legal legislations that regulate the government contracting in Iraq.

Signature:

Name of Representative Authorized by the Contracting Party (Employer): Position of Representative Authorized by the Contracting Party (Employer):

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## **Part Two – Work Requirements**

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Section Seven– General Conditions of Contract

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Section Nine– Annexes of the Special Conditions of Contract and Contract Forms

**Part One – Contracting Procedures for  
The Contracts of Executing the Works**



**Section One– Instructions to Bidders for  
The Contracts of Executing the Works**

**Section One– Instructions to Bidders for  
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## **Instruction to Bidders**

### **A) General**

#### **1. Scope of the Bid**

**1-1** In reference to the invitation to bidders the "employer" that has been identified in section 2 "**Statement of the Bid**", has issued these documents for the implementation of Works as set out in section 6 "Work Requirements". The name and number of bid shall be included in **Statement of the Bid** and special conditions of the contract.

**1-2** The following shall be adopted in the bidding documents:

- A. "Written" shall mean any means of written communication (post, email, and fax) with confirmation of their receipt.
- B. Unless the context otherwise requires, the singular form shall be used to describe the plural and vice versa.
- C. "Day" shall mean calendar day.

#### **2. Source of Finance**

**2-1** The federal budget of the Government of Iraq

#### **3. Fraud and Corruption**

**3-1** Employer shall require from bidders, contractors and their subcontractors, suppliers and consultants contracted to adhere to the highest standards of ethics during the contracting process and contract implementation. And to achieve this policy:

- A. The employer shall adopt the following definitions for the purpose of these texts:
  - 1) "Corrupt practices" shall mean provide or give or receive or solicitation of, directly or indirectly, anything of value to influence the work of an official in a position of public responsibility during the supply process or contract implementation.
  - 2) "Fraudulent practices" shall mean any misrepresentation or deletion of any facts in order to influence the supply process or contract implementation.

3) "Collusion practices" shall mean any planning or coordination between two or more Bidders, with or without the knowledge of the employer in order to set fake and uncompetitive prices.

4) "Coercive practices" shall mean harm or threat to harm, directly or indirectly, the persons or their properties to influence their participation on the supply process or to influence the contract implementation.

5) "Hindrane practices" and shall mean the following:

6)

**First** - The deliberate destruction or forgery or change in documents or withholding evidence necessary for investigation or give false testimony to investigators to hinder the investigation by the employer concerning administrative corruption practices or fraud or collusion or coercive practices or threat or harassment or obstruction of any party and prevent him from providing any information relating to the investigation or to prevent him from pursuing the investigation.

**Second** – Practices that hinder the employer from pursuing the audit and review procedures pursuant to clause (3-1-d) of Instructions to Bidders.

- B. Award of contract proposal shall be rejected if it found out that the Bidder who submitted it who has been chosen to be awarded the contract has involved, directly or through an agent, in corrupt or fraudulent or collusion or coercive practices or hindrance during his competing for the contract in question.
- C. Penalties shall be imposed on any institution or individual that has been chosen to be awarded the bid, including the announcement of ineligibility, for limited or unlimited period, if it is found at any time that the institution has been involved, either directly or through an agent, in corrupt, fraudulent, collusive or coercive practices or hindrance during the competition for the contract and / or during the implementation of that contract.
- D. Adding a condition in the contract documents, and the contract funded by the employer states that the Bidders or suppliers or contractors or consultants shall allow the employer to carry checks on their accounts, records and documents related to contracting procedures and the to implement the contract and to allow to be audited by auditors appointed by the employer.

**3-2** In addition to the foregoing, the Bidder shall become familiar with the conditions mentioned in paragraph (15-6) of the general conditions of the contract.

## 4. Eligible Bidders

**4-1** The bidder shall be either a natural person, private company or state company (owned by the government) or consortium (partnership) according to partnership contracts certified according to the rules, submitted with the bid, if the contracting party does not request to be submitted after the award of tender) ((taking into account the limitations in paragraph (4-5) of these instructions)), and in case of the joint venture and consortium

A. Unless otherwise stated in the **bid data sheet**, all partners in the joint venture shall assume full and joint liability for the implementation of the contract under its conditions.

B. The joint venture (consortium) shall name a representative acting on behalf of all contributors' partners and he shall be authorized with the powers necessary to perform the contract, starting from the preparation and submission of bid (tender), and then bid award, and through the period of contract implementation.

Bidders and all partners of a joint venture of nationality holders of any State shall have the right to participate in bids under the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it , and instructions in force, provided that Determinants (limitation) indicated Chapter V of these documents (Eligible Countries) shall be acted upon.

The Bidder, holder of a nationality of a state, shall either be a citizen in it or has established or participated or registered the company in it and worked under the requirements and conditions of the law of that State. This definition shall be relied on to determine the nationality of any subcontractor or supplier participated in implementation of part of the contract.

**4-3** Bidders shall not have any conflict of interests, where any Bidder found to be involved in any of the conflict of interest situations listed below shall be excluded and consider to be ineligible:

A. If one of the main partners is a shareholder in more than one company participating in the bid.

B. If the Bidder received or will receive any aids directly or indirectly from any other companies participating in the bid.

C. If more than one Bidder has one mutual legal representative who acts on their behalf in pursuing bid submission procedures

D. If there is a relation between Bidders directly or through a mutual third party that allows each of them to obtain any information or influence the bid submission to another Bidder, or influence the decisions of the employer during the contracting procedures.

- E. If it found out that the Bidder has participated in more than one tender in the same bid, tenders participated in shall all be considered ineligible. But this shall not include subcontractors to contribute more than one bid.
- F. Bidder, who previously participated as a consultant in the preparation of the designs and the technical specifications of similar works represented by the bid.
- G. The Bidder or any of its affiliates that has been contracted with (or suggested to be contracting with) by the employer to carry out the tasks of the engineer to manage the contract.

**4-4** Any ineligible Bidder shall be excluded by the employer according to paragraph (3) of Instructions to Bidders, upon contract award and a list of the excluded institutions is available on the website provided in the **bid data sheet**.

**4-5** State companies in the Republic of Iraq are considered only eligible if they: (1) have proven that they are legally and financially autonomous and (2) operate according to trade law **and state companies law**, and these companies shall not be agencies of the employer.

**4-6** Bidders shall prove the continuation of their eligibility to the satisfaction of the employer whenever the employer requested.

**4-7** Bidders shall be excluded in one of the two following cases:

- A. The existence of laws or instructions issued by the employer's state prohibiting trade deal with Bidder's state; and
- B. Based on Security Council resolutions of the United Nations under Chapter VII of the United Nations Declaration, which prohibits the employer from importing or contracting for works or services, or payment to individuals or institutions in the State of the Bidder.

## **5. Eligible Materials, Equipment and Services**

**5-1** Materials, equipment and services provided under this contract funded by the employer shall be of eligible (qualified) origins (eligible countries according to the determinants (limitations) indicated in Chapter 5). And that all amounts disbursed shall not be inconsistent with this. Bidder shall provide evidence that proves the true origins of materials, equipment and services as soon as required by the employer.

## **B) Content of Tender Documents**

### **6. Parts of Tender Documents**

**6-1** Tender documents are those parts 1, 2, 3 listed hereinafter and shall be read with the additions referred in paragraph (8) of Instructions to Bidders

#### **Part One–Contracting Procedures**

- - Section One – Instructions to Bidders
- Section Two – Bid Data Sheet (BDS)
- Section Three – Evaluation and Qualification Criteria
- Section Four – Bidding Documents
- Section Five – Eligible Countries

#### **Part Two- Work Requirements**

- Section Six - Works Requirements

#### **Part Three– Contract**

- Section Seven – General Conditions of Contract(GCC)
- Section Eight – Special Conditions of Contract (SCC)
- Section Nine – Annexes of the Special Conditions of Contract

**6-2** Form of the invitation to bid issued by the employer shall not be considered of tender documents.

**6-3** The employer shall not be responsible for the completeness of bidding documents and their annexes if they were not been received directly from sources specified by the employer in the Invitation to Bid.

**6-4** The Bidder shall check (audit) all instructions, forms, expressions and specifications submitted contained in the bidding documents. And that the lack of commitment to provide the required information and documents may lead to the exclusion of Bid.



## 7. Clarification of Tender Documents, Site Visit and Pre-bidding Conference:

- 7-1** In case of need to clarify or interpret any of the information contained in the bidding documents, the Bidder shall communicate with the employer mentioned in **bid data sheet** or present his inquiries in the pre-bid meeting referred in paragraph (7-4) of Instructions to Bidders. The latter shall answer in inquiries he receives provided that they shall be received by an appropriate date not less than (10) days of the deadline for submission of bids in which the deadline for receiving of bids is specified in (15) day from the date of the last publication of the announcement in the newspapers or as stipulated in the bid data sheet and the employer shall send a copy of the inquiry with his answer to each who received the bidding documents directly under paragraph (6-3) of the Instructions to Bidders without reference to the inquired party. And if it results from the inquiries the need to amend the basic bidding documents. The employer shall make the amendments and issue an annex under the procedures specified in paragraphs (8) and (22-2) of the Instructions to Bidders.
- 7-2** It's preferable that Bidders visit the worksite and the surrounding sites to obtain on his responsibility any necessary information to assist him in preparing his bid for the implementation of Works. And Bidders shall bear the costs resulting from securing such visit.
- 7-3** The Bidder and any of his representatives or agents shall have the right to access to the work site after obtaining employer's approval in order to identify the site conditions, provided that the Bidder's agents and representatives undertake to exempt and compensate employer's representatives or agents from any liability or claim for death or injury or damages or any financial loss realized as a result of this visit.
- 7-4** The authorized bidder's representatives shall be invited to attend the pre-bid meeting if referred to this in the **bid data sheet**. The aim of this conference is to clarify and answer any inquiries presented during this phase
- 7-5** Bidder shall present his questions in writing in an appropriate period not to exceed one week from the date of conference.
- 7-6** Conference minutes containing the inquiries (without mentioning their sources) and the answers in their regard shall be sent to all Bidders who bought bidding documents under paragraph (6-3) of the Instructions to Bidders, and any amendments necessary on the bidding documents resulted from such inquiries presented in the conference, an annex for bidding documents shall be sent thereunder and provided to all Bidders, pursuant to the provisions of article (8) of the Instructions to Bidders and not through the conference minutes.
- 7-7** Failure to attend the pre-bid meeting shall not be a cause to consider the Bidder ineligible.

## **8. Amendment of Tender Documents**

**8-1** The employer shall have the right to amend bidding documents at any time prior to the deadline for submission of bids, through issuing annexed amendments.

**8-2** Any annex to the bidding documents shall be part of the bidding documents and shall be issued and distributed in writing to all bidders who bought the bidding documents under paragraph (6-3) of the Instructions to Bidders.

**8-3** The employer shall extend the deadline for submission of bids pursuant to paragraph (22-2) of the Instructions to Bidders and give bidders sufficient time to take into account the amendments marked in the bid annex when preparing their bid.

### **C) Preparation of Bids**

## **9. Cost of Bid**

**9-1** The bidder shall bear the total cost resulting from the preparation and submission of his bid and the employer shall bear no responsibility for this regardless of the procedures and results of the bidding.

## **10. Language of Bid**

**10-1** The bid and all the correspondence and the documents exchanged between the bidder and the contracting party must be prepared in the language referred to in the paper of bid data. The bidder may submit any of the literature related thereto which constitute part of his bid in another language, provided that it must be accompanied with an accurate translation for its texts to the language of the bid. Hence the translation will be accepted for the purpose of interpreting the bid.

## **11. Documents Comprising the Bids**

**11-1** The bid consists of the following documents:

- A. Bid letter and bid annex ;
- B. Complete tables required including the priced tables under articles (12) and (14) of the Instructions to Bidders;
- C. Bid Guarantee under article (19) of the Instructions to Bidders;

- D. Alternative tender if allowed under article (13) of the Instructions to Bidders;
- E. A written authorization to the bidder representative to sign the bid under paragraph (20-2) of the Instructions to Bidders;
- F. Documents approved by authorities specified in the **bid data sheet** which confirm the continued eligibility of the Bidder under article (17) of the Instructions to Bidders, or documents of subsequent eligibility under the forms included in Section 4 to verify the eligibility of the Bidder, whose bid has been accepted;
- G. Technical proposal under article (16) of the Instructions to Bidders;
- H. Any other documents stipulated in the **bid data sheet**.

**11-2** In addition to the documents referred to in paragraph (11-1), the bid submitted by the joint venture shall be accompanied by the founding agreement (Incorporation Agreement) of the joint venture (partnership contract certified according to the rules) if the contracting party does not request this agreement after the tender award.

## **12. Bid Letter and Schedules**

**12-1** Bid letter and schedules including scheduled of priced quantities shall be made by adopting standard documents referred in **Section 4** (Bids Forms). The forms shall be completed without any amendments or replacements on its context only as specified in paragraph (20-2) of Instructions to Bidders, and all blanks shall be completed.

## **13. Alternative bids**

- 13-1** No alternative bids shall be accepted only If stated otherwise in the bid data sheet to accept.
- 13-2** When bidders are requested to provide extended terms to complete the Works, which will be included in the bid data sheet with a detailed presentation for the manner in which to be followed in the provision of various extended terms.
- 13-3** Except to what is mentioned in paragraph (13-4) of Instructions to Bidders listed hereinafter, the bidder shall have the right, in case of his wish to provide an alternative technical bid to submit his bid according to bid documents and design prepared by the employer; and then, his alternative bid shall be submitted enhanced by all necessary information of designs, technical specifications, price analysis and the methodology that shall be adopted in the implementation of work (if any) to enable the employer to adopt it by comparison.  
And the employer shall compare the alternative bids with those least costly under the main bids documents in the bid documents.

**13-4** Bidders shall submit their alternative technical solutions to implement some parts of the works, if so provided in the **bid data sheet**, and to determine the methodology that to be adopted in the analysis and comparison as described in Chapter 6 (Works Requirements).

## **14. Bids Prices and Discounts**

**14-1** The prices and discounts offered in the Bid Letter of the bidder and the tables of quantities priced by him shall be subject to the following procedures:

**14-2** Bidder shall fill the unit price and the amounts of all items in table of quantities. No payment shall be made for the value of items in the table of quantities which their unit prices or their amounts are not been filled when implemented and their amounts shall be considered covered by implication within the prices and amounts of other items in the table of quantities.

**14-3** The price specified in the Bid Letter under paragraph (12-1) of the Instructions to Bidders shall be the final price of the bid excluding any discounts provided.

**14-4** The bidder may propose any unconditioned discounts, and methodology specified for its implementation in the Bid Letter pursuant to the provisions of paragraph (12-1) of the Instructions to Bidders.

**14-5** Prices and salaries provided by the bidder shall be subject to amendment during contract implementation under the General Conditions of the Contract, unless specified otherwise in the **bid data sheet** and the contract, and in this case the bidder shall provide the employer with prices index and their relative weight for each component of the implementation items specified in the equation of price adjustment referred to in the table of amendment data enhanced by documentation that support this. The employer may demand from the bidder to provide his justification for the indicators' level.

**14-6** If reference is made to the adoption of principle of apportionment in the award under paragraph (1-1) of Instructions to Bidders, the bidders who wish to obtain part or several parts of the works may submit their proposal of the discount percentage proposed for each part or group of parts. The discount percentage shall be submitted under paragraph (14-4) of the Instructions to Bidders provided that submission and open of bids shall be done in one day for all works.

**14-7** Bid prices shall be inclusive of all taxes, customs, fees and any charges related to the contract applicable in the period leading up to the deadline for submission of bid in 28 days unless it is provided to exclude the bid prices from taxes, customs and fees in **bid data sheet**.

## **15. Currencies of Bid and payments**

**15-1** The (currency/ currencies) of the bid and (currency/ currencies) of payments shall be as specified in **bid data sheet**.

**15-2** The employer is entitled to ask the bidder, for the purpose of verifying, to determine his need of local and foreign currency and provide evidences enhanced by analysis of prices and salaries for items to clarify the reasonableness of the need with details of items of the foreign currency required.

## **16. Documents Comprise the Technical Proposal**

**16-1** The bidder shall provide his technical proposal containing the methodology and the work plan that will be followed in the implementation of works, showing the staff and equipment used and implementation program as outlined in Section 4 and any details to support the success of the technical proposal in achieving the works' requirements and their completion at the completion deadline.

## **17. Documents Supporting of prequalification of the Bidder**

**17-1** Pursuant to the provisions of section 3 (Evaluation & Comparison Criteria), bidder in limited bids shall provide the updated documents for qualification that Include any changes occurred in the qualifications during the period that followed the pre-qualification procedures at the announcement of the limited bid under the forms for this Section 4.

And that these documents shall be issued by the competent authorities in the bidder's country and approved by the Ministry of Foreign Affairs in the bidder's country and diplomatic missions of the Republic of Iraq in that country. If the principle of granting the margin of preference was adopted to local bidders pursuant to paragraph (33) of the Instructions to Bidders, then the local bidders who participate in the bid individually or through a joint venture shall hope to get a preferential right to provide all information requested in paragraph (33) of the Instructions to Bidders that qualify them for a margin of preference.

## 18. Period of Validity of Bids

**18-1** The bid shall remain in force for the period specified in **bid data sheet** and for the period extended after the deadline for submission of bids as specified by the employer in paragraph (22-1) of the Instructions to Bidders, any bid includes a validity period less than the period specified above shall be refused and shall be considered unresponsive.

**18-2** In exceptional circumstances and before the expiration of the period of validity of bids, employer shall be entitled to ask the bidders to extend the validity of their bids, and the request shall be submitted and Bidder's response in writing, and if the documents include the submission of bid guarantee under the provisions of paragraph (19-1) of the Instructions to Bidders, the Bidder, whose period of validity has been extended, has the right to extend the period of bid guarantee till 28 after the expiry date of the amended period of validity of bids. The Bidder shall have the right to refuse the request for the extension of period of validity of bids without seizure of his bid's guarantee.

The Bidder, whose request to extend the period of validity of his bids has been accepted, shall not have the right to request to amend his bid except what is mentioned in paragraph (18-3) of Instructions to Bidder.

**18-3** If contracting procedures delayed to a period more than (56) day after the date of Period of Validity of the initial Bid, then bid amount shall be determined as follows:

- A. In case of fixed price contracts, the contract amount shall be the bid price multiplied by coefficient (factor) fixed in the **bid data sheet**;
- B. In case of contracts in which prices are adjustable, and for the purpose of determining the contract amount of its parts that are not included in price adjustment, the price shall be adjusted by multiplying the price of such parts by the coefficient (factor) specified in **bid data sheet**; and
- C. In any of these cases, bids references shall be made based on the bid price without taking into consideration the adjustment referred to above.

## 19. Bid Guarantee

**19-1** Bidder shall include in his bid the bid guarantee in original copy and in the form, amount and currency specified in the **bid data sheet**.

**19-2** If the bid guarantee was required under paragraph (19-1) of Instructions to Bidders, it shall be payable immediately upon written order from the employer in one of the following forms chosen by the Bidder:

- A. Unconditioned bank guarantee from accredited bank.
- B. Certified check issued by an accredited bank.
- C. Any other form referred to in the **bid data sheet**.

And that bid guarantee shall be issued from a banking institution of an accredited reputation and from an eligible country, and if the institution that issued the bank guarantee exists outside the employer's country, it shall have a correspondent banking institution in the employer's country to activate the guarantee. It is possible to adopt the forms (templates) set out in **Section 4** within the bidding documents. Or any other form agreed upon with the employer before bid submission. And whatever the form agreed upon, it shall include the name of Bidder and shall be valid for a period of (28) day after the date of the original deadline for bid validity or after date of extension of bid validity if made under paragraph (18-2) of the Instructions to Bidders.

**19-3** If bid guarantee is requested pursuant to the provisions of paragraph (19-1) of the Instructions, then any bid that does not include bid guarantee in the required form shall be considered unresponsive.

**19-4** If the bid guarantee is requested pursuant to the provisions of paragraph (19-1) of Instructions to Bidders, then bid guarantee shall be returned immediately to unsuccessful Bidders, as soon as the winning Bidder submits the performance bond under paragraph (41) of Instructions to Bidders and the signing of the contract under paragraph (40) of Instructions to Bidders.

**19-5** The bid guarantee shall be confiscated if the winning Bidder fails in:

**First:** signing the contract under paragraph (40) of Instructions to Bidders.

**Second:** submitting performance bond under paragraph (41) of Instructions to Bidders.

**19-6** The bid guarantee for the joint venture shall be in the name of the joint venture submitting the bid and if the joint venture still not established legally at the time of bid submission then bid guarantee shall be in the name of all future partners as mentioned in the Invitation Letter referred in paragraph (4-1) of the Instructions to Bidders.

**19-7** Employer is entitled, if so provided in the **bid data sheet**, to announce the contractor's ineligibility for the award of any work to him and for the period specified in **bid data sheet** in the following cases:

- A. If the bid guarantee was not as required in paragraph (19-1) of the Instructions to Bidders.
- B. If the winning Bidder fails in signing the contract under article (40) of the Instructions to Bidders and in submitting the performance bond under article (41) of the Instructions to Bidder.

## 20. Bid Format and Signing of Bid

**20-1** Bidder shall prepare one original copy of documents constituting the bid as shown in the Instructions to Bidders in Article (11) and the envelop that contain it shall be marked in by the words (original copy) clearly. And if alternative bids under article (13) of the Instructions to Bidder were accepted, the Bidder shall submit additional copy of the bid in accordance to what the **bid data sheet** states and to mark the envelope with the words (original copy). In the case of a difference between the original and additional copies, the original version shall be relied on.

**20-2** The original bid and all additional copies shall be printed or written in an ink that is hard to erase and shall be signed by the authorized to sign in behalf of the Bidder, and the Authorization Letter shall be attached as mentioned in **bid data sheet** and attached to the bid. The name and position of the authorized persons shall be printed under their signatures. And that bidding documents in which the required information is written in them or being amended shall all be signed by the person who has signed the bid.

**20-3** The bid submitted by the joint venture shall meet the following requirements:

- A. Unless required under paragraph (4-1) of the Instructions to Bidders, it shall be signed to be binding on all partners; and
- B. And it is required to attach an authorization for the joint venture's representatives signed by authorized Legal representatives of all partners in the joint venture certified by a notary.

**20-4** Any marking or deleting or adding words on the bid shall be enhanced by the signature of the bid's signatory in order to consider it in force (valid).

## D) Submission and Opening of Bids

## 21. Submitting, Closing and Marking of Bids

**21-1** Bidder shall place original and reproduced copy of the his bid as well as the alternative bid (if allowed under paragraph (13-4) of the Instructions to Bidders) in separate envelopes and marked by the words (original copy) or (alternative bid) and then the envelopes that contain the original and the reproduced copies shall be placed in one envelop.



**21-2** The outer and inner envelopes shall be marked by the following:

- A. Name and address of Bidder;
- B. Name and address of employer under paragraph (22-1) of the Instructions to Bidders;
- C. Name and number of bid under the paragraph (1-1) of bid data sheet; and
- D. Warning not to be opened before the deadline for the opening of bids.

**21-3** Employer shall not bear any responsibility for any loss or shortage in bids that are submitted without closing, sealing, signing and marking them as required by the instructions.

## **22. Deadline for submitting the bids**

**22-1** Bids shall be submitted to the employer's address at a date not exceeding the date and time specified in the **bid data sheet**. The Bidders shall have the right to submit their bids electronically if stated in the **bid data sheet** and they shall at that time adopt the procedures set out for that in the **bid data sheet**.

**22-2** The employer shall have the right to extend the deadline for submission of bids through amending the documents under article (8) of the Instructions to Bidders, and in this case, the rights and obligations of both parties specified in previous date shall be included in the extension.

## **23. Late Bids**

**23-1** Employer shall not receive any bid submitted after the deadline for submission of bids under article (22) of the Instructions to Bidders, and that any bid received after the deadline shall be considered late and shall be rejected and returned unopened to the Bidder.

## **24. Withdrawal, Replacement and Amendment of Bids**

**24-1** Bidder may withdraw or replace or amend his bid by written notice signed by the authorized person under paragraph (20-2) of the Instructions to Bidders before the deadline, provided that a copy of the authorization (except in withdrawal cases) to submit the bid to shall be attached to the notice. And that notices of replacement or amendment or withdrawal shall:

- A. Be prepared and submitted under articles (20) and (21) of Instructions to Bidders (except notice of withdrawal, it shall not require a copy of the authorization) and envelopes of notices shall be marked by the word (withdrawal) or (replacement) or (modification) clearly; and
- B. Be delivered before the deadline for submission of bid under article (22) of the Instructions to Bidders.

**24-2** Bids that a notice of withdrawal is submitted thereto shall be returned to bidders unopened.

**24-3** It is not allowed to withdraw or replace or modify any bid after the deadline for submission of bids and till the expiry of the bid specified by the bidder in his Bid Letter or any extension thereof.

## 25. Bid Opening

- 25-1** Employer (**Committee for Opening Bids**) shall open the bids publically in the presence of bidders or their (**authorized**) representatives at the address, time and date specified in **bid data sheet** and that any procedures of electronic opening, if applicable, under paragraph (22-1) will be referred to in **bid data sheet**.
- 25-2** Enveloped entitled (withdrawal) shall be opened and read first and the bids it represent shall be returned to Bidders unopened. It is not allowed to withdraw any bid unless the notice of withdrawal given by the end authorized person to submit the bid is read. Following is the opening of the envelopes entitled (replacement) and reading it and the bid that has been replaced shall be returned to the Bidder and the replaced bid shall be read. It is not allowed to replace any bid in which no notice thereof is given by the deadline of submission of bids, and this will be followed by opening of enveloped entitled (modification) and the previous bid shall be returned to the Bidder and the modified bid shall be read, no modified bid shall be accepted unless a notice thereon is given by the person authorized before the deadline for submissions of bids, and shall be taken into consideration in the bids that are opened and read later.
- 25-3** Employer (**Committee for Opening Bids**) shall start opening bids by reading the bidders' names and the amount of their bids and any discount or modification presented. As well as reading the alternative bids and determining whether Bidders have attached bid guarantee or not if that was required and any other details that the employer may deem appropriate, and that the alternative bids and those containing a discount that have been read during bid opening shall be examined when comparing and evaluating the bids if stated in **bid data sheet**. Signing of Bid Letter and all tables (schedules) shall be made by the Bids Opening Committee and no bid shall be rejected except those delayed under paragraph (23-1) of the Instructions to Bidders.
- 25-4** Employer (**Committee for Opening Bids**) shall prepare a minute of bids opening which shall include , as minimum, the name of the Bidder and if the bid has been withdrawn or replaced or modified, the amount of the bid (according to each part if required), and any discounts proposed on the bid, and alternative bids, and to attach bid guarantee to the bid if was required, and all Bidders present shall be asked to sign the minute, and the delete of the signature of any Bidders shall not affect the content of the minute and shall be circulated to all Bidders.

## **E) Evaluation and Comparison of Bids**

### **26. Confidentiality**

- 26-1** Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for award of the contract to Bidders or anyone else officially irrelevant to this process will not be announced until the declaration of contract award to the winning Bidder and inform all bidders thereof.
- 26-2** Any attempt by the Bidder to influence the employer (**Committee of Evaluating and Analyzing the Bids**) in his bids' processing or in award decision might result in rejecting his bid.
- 26-3** Notwithstanding in paragraph (26-2) of the Instructions to Bidders, if any bidder wishes to contact the employer about any matter related to the bidding process in the period between bid opening and contract award, he can do so in writing.

### **27. Clarification of Bids**

- 27-1** To facilitate the bids auditing process and their evaluation and comparison, employer (**Committee of Evaluating and Analyzing the Bids**) may ask any bidder to clarify his bid including units' price details.

Any clarification provided by the bidder which not a result of answering an inquiry from the employer shall not be taken into account. The request for clarification and the answer shall be made in writing without incurring any change in the price or the essence of the bid submitted, or proposing this or allowing it only within the limit of correcting calculation mistakes discovered by the employer (**Committee of Evaluating and Analyzing the Bids**) during the bid evaluation under article (31) of the Instructions to Bidders.

- 27-2** If the bidder did not answer on any substantial clarifications about his bid in time and date specified by the employer (**Committee of Evaluating and Analyzing the Bids**) that would make the bid unresponsive and / or incomparable, then his bid shall be excluded.

### **28. Deviations, Reservations and Omission**

During the bids evaluation process, the following definitions shall be adopted:

- a) **Deviations**: shall mean deviations from requirements specified in bidding documents;
- b) **Reservations**: is setting specified conditions or lack of full acceptance of the requirements specified in bidding documents of the Bidder; and
- c) **Omission**: shall mean Bidder's failure in providing part or all information and documents required in bidding documents.

## 29. Determining of Response

**29-1** The employer's determination to response to any bid shall be made according to the content of its bid and as described in article (11) of the Instructions to Bidders.

**29-2** The responsive bid is basically the bid that meet the requirement in bidding documents without any variations or reservations or deletion, **as for the meaning of important variations, they are:**

- a) If accepted they shall:

**First:** Mainly affect the quality and performance of works specified in the contract; and

**Second:** Basically determining is not compatible with the bidding documents, the rights or obligations of the employer or the Bidder in the proposed contract.

- b) If amended it shall unfairly affect the competition status of the rest of bidders who mainly submit responsive bids.

**29-3** The employer shall examine the technical indicators referred in the technical proposal of the bid under article (16) of the Instructions to Bidders specifically in regard to meeting work's requirements referred in chapter six without any significant variation or reservations or deletion.

**29-4** If the bid was unresponsive mainly to the requirements of bidding documents, it shall be rejected by the employer and it is not allowed to render it responsive hereinafter through making any modification on the significant variations or reservations or deletion.

## 30. Non-Important and Non-Conforming Bids

**30-1** If the contract is responsive mainly, employer shall have the right to dismiss any non-conformity in the bid that does not constitute a significant variation or reservation or deletion.

**30-2** If the bid is responsive mainly, employer may request the Bidder to provide any information or documents necessary within a reasonable time to remedy any insignificant errors or non-conformity in his bid, provided that it shall not have impact on prices. And that the non-responsiveness of the Bidder to employer's request to remedy this will lead to the rejection of his bid.

**30-3** If the bid is responsive mainly, the employer shall correct the non-conformity or any insignificant errors measurable in the bid amount resulting from the non-pricing of some paragraphs or non-conformity, modification shall be carried out by adopting the mechanism referred in the analysis and qualification methodology in chapter three of bidding documents.

### **31. Correcting Arithmetical Errors**

**31-1** If the bid is responsive mainly, the employer shall correct the arithmetical errors by adopting the following:

- A. If there is a discrepancy between the unit price and the item's amount, the unit price is relied on and item's amount shall be adjusted in the light of this, only if there is an error in the location of the decimal point in the unit price from the viewpoint of the employer, then the amount shall be approved and the price shall be corrected.
- B. If there was an error in gross total of the lists of the tables of quantities as a result of addition and subtraction measures of the totals submenus in the tables of quantities, the totals submenus shall be approved and gross total shall be adjusted.
- C. If there is a discrepancy between the values of the amount of any item that is written in figure and in writing, the number specified in writing shall be adopted, unless there was an arithmetic error in determining the value of the amount as a result of paragraphs A and B above. The specified in figure (number) shall be adopted.

**31-2** If the Bidders of underbid refused the modifications on arithmetical errors in his bid, his bid shall be rejected.

### **32. Conversion to Single Currency**

**32-1** For the purposes of comparison and analysis, the currency (currencies) mentioned in the bid shall be converted to a single currency as specified in the **bid data sheet**.

### 33. Margin of Preference

Unless stated otherwise in the bid data sheet, no preference margin shall be adopted for bids submitted by local bidders, and then reference shall be made to the value determined for preference in **bid data sheet**.

### 34. Evaluation of Bids

**34-1** The employer (**Committee of Evaluating and Analyzing the Bids**) shall adopt the methodology and mechanism listed in this article for the purpose of analyzing and evaluating the bids and no other methodology and mechanism shall be accepted.

**34-2** For the evaluation and analyze of bids, the employer (**Committee of Evaluating and Analyzing the Bids**) shall consider the following:

- a) Exempt the reserved amounts (amounts for reserved items in the table of quantities) from the bid amount with keeping the priced items of daily paid work for competition purposes.
- b) Prices adjustment because of arithmetic errors under paragraph (31-1) of Instructions to Bidders
- c) Prices adjustment as a result of any discount specified under paragraph (14-4) of Instructions to Bidders.
- d) Adjust the final amount of the bid in light of paragraphs (A, C) above to one currency under the provisions of item (32) of Instructions to Bidders.
- e) Correct the prices for any insignificant errors or inconsistency measurable under paragraph (30-3) of Instructions to Bidders.
- f) Evaluation coefficients specified in Chapter Three of the (Eligibility and Evaluation Criteria).

**34-3** The expected effects of the terms of review of prices during the implementation period referred to in the general conditions of the contract will not have an impact on the evaluation of bids.

**34-4** If the bidding documents stated the possibility of segmentation of works and the right of bidder in submitting his prices for parts of the works or a group of parts, then determination of best bid price wise for a group of parts including any decrease proposed in the bid letter in this regard shall be made under section three (Eligibility and Evaluation Criteria).

**34-5** If it resulted from the analysis, a bid significantly less than the true cost from the standpoint of the employer, the employer is entitled to ask the bidder to provide details of calculation of cost components and the method of calculation and schedule of implementation of an item or items of all table of quantities and after assessment and analysis of prices, taking into account the speculative cost adopted in the plan, the employer is entitled to increase the letter of guarantee at the expense of the bidder to a level that guarantees the protection of the employer from any material loss in the event of the contractor's inability to implement his commitment under the contract.

### **35. Comparison of Bids**

**35-1** The employer (Committee of Evaluating and Analyzing the Bids) shall compare all responsive bids mainly under paragraph (34-2) of the Instructions to Bidders to determine best suitable bid

### **36. Qualifications of Bidder**

**36-1** Employer (Committee of Evaluating and Analyzing the Bids) shall decide, with conviction, that the underbid Bidder and responsive mainly, still have the qualifications specified in the previous qualification, if the work has been done in accordance with the limited bids or has met the requirements of the subsequent qualification specified in section three (Eligibility & Evaluation Criteria).

**36-2** Determining the winning candidate by the employer (Committee of Evaluating and Analyzing the Bids) shall be made after examining all documents related to proving his qualifications that are provided by him under paragraph (17-1) of the Instructions to Bidders.

**36-3** The positive decision in the selection of the candidate is the basis for the conclusion of the contract and that the negative decision would result in the disqualification of bid and in the light of this, an employer shall resort to underbid bid, to adopt the same mechanism to verify the availability of the eligibility requirements for the Bidder.

### **37. Employer's right to accept or reject Bid**

**37-1** Employer shall reserve the right to accept any bid or to cancel contracting procedures and to reject all bids at any time before contract conclusion without any obligations to Bidders. And in the event of cancelling a bid, all bids and bids guarantee shall be returned to bidders.



## **F) Award of Contract**

### **38. Awarding Methodology**

**38-1** Employer shall award the contract on bidder that the results of the underbid analysis showed that his bid was responsive mainly to bidding documents under the provisions of paragraph (37-1) of the Instructions to Bidders and after he is completely convinced of the Bidder's ability to implement the contract satisfactorily.

### **39. Announcement of Award**

**39-1** Employer shall, and prior to the expiry of period of validity of bids, announce in writing the winning bidder by accepting his bid. And that the notification letter identified hereinafter in the Acceptance Letter (Award Letter) in each of the form of contract and the general conditions of the contract shall include the amount payable by the employer to the contractor for the designing, implementing and completing the Works and their maintenance and operation (if so stated) (identified hereinafter in the form of contract and in the general conditions of the contract as Contract Amount), and at the same time, employer shall give notice to all bidders of the result of the bid, and to publish on his website or the website of the (UNDP) and (dg Market) as well as the results of bids analysis and contracts concluded and information listed below:

- A. Names of all participating Bidders.
- B. Bid prices of each of them upon bids opening;
- C. Name and price of bid evaluated for each bid that has been evaluated;
- D. Names of Bidders whose bids have been rejected and the reasons lead to the rejection; and
- E. The name of winning bidder, the amount of his bid, a summary of awarded Works and time set for implementation.

**39-2** Till the preparation of contract and its signature, notification of award (letter of acceptance) shall be considered a binding contract.

**39-3** Employer shall, as soon as the Notification of Award (Acceptance Letter) is issued, respond to inquiry requests received in writing from bidders that weren't fortunate and inform them the reasons for not the non-selection of their bid.

#### **40. Signing of Contract**

**40-1** As soon as the Notification of Award (Acceptance Letter) is issued, employer shall provide the winning bidder with (Form of Contract).

**40-2** The bidder shall, within a period no more than (29) day from his receipt of Form of Contract including the warning period or after the end of appeal period, sign the contract and fix its date and returned it to the employer.

#### **41. Good Performance Guarantee**

**41-1** Bidder shall, within a period no more than (29) day from the date of Notification of Award (Acceptance Letter) is issued by the employer, including the warning period, provide a performance guarantee according to the general conditions of the contract with using the forms referred in the special conditions' annexes in section 9 (Contract Documents forms) or any forms approved by the employer. The good performance guarantee shall be issued by an accredited bank in the employer's country or any foreign bank that has a correspondent bank in the employer's country.

**41-2** In case of winning bidder's failure in providing the performance bond referred above, or signing the contract, it will result in canceling of the award and confiscating the bid guarantee and then the employer shall have the right to award the contract to the second bidder whose bid was responsive mainly, and employer is convinced that he has the qualifications to perform the contract satisfactorily and the forgoer bidder shall bear the difference of the two prices

**Section 2 – Bid Data Sheet**  
**For Contracts of Executing Works**  
**A. General**

<b>1-1</b> Instructions to Bidders	Invitation number for the submission of bid: -----
<b>1-1</b> Instructions to Bidders	Employer name: -----
<b>1-1</b> Instructions to Bidders	Bid's name: ----- Bid's number: ----- Number and description of tables of quantities of the bid: -----
<b>4-1-A</b> Instructions to Bidders	All members of the joint venture or institution (insert who bear or not bear) the full and Joint liability in the implementation of the contract.
<b>4-4</b> Instructions to Bidders	There is a list of names of companies that are unqualified or prohibited to work in the Ministry of Planning & Development Cooperation/ Department of General Government Contracts {Insert their website}

**B. Bidding Documents**

<b>7-1</b> Instructions to Bidders	For the purpose of clarifying procedures only, the employer's address is:  Name of authorized person: Floor & room No.: Street No.: City: Country: Phone No.: Fax No.: Email:
<b>7-4</b> Instructions to Bidders	Pre-bid Meeting shall be held at the time, date and place:  Time: Date: Place:  The employer shall visit the site on: -----

C. Preparation of Bid	
10-1 Instructions to Bidders	Language of Bid shall be -----
11-1-h Instructions to Bidders	Bidder shall provide the additional documents with his bid -----
13-1 Instructions to Bidders	Alternative bids: {insert allowed or not allowed}
13-2 Instructions to Bidders	Alternative period for project implementation: {insert allowed or not allowed} provide alternative period for project implementation. If alternative period for project implementation is approved, the preference methodology shall be determined for this purpose in section three (Evaluation & Qualification Criteria)
13-4 Instructions to Bidders	The Bidder may provide alternative technical solutions for parts of the Works shown hereinafter: ----- If the bidder is allowed to provide alternative technical solutions, the preference methodology shall be adopted for this purpose as specified in section 3 of the documents (Evaluation & Qualification Criteria)
14-5 Instructions to Bidders	Prices provided by the bidder <b>upon the implementation of contract</b> {Insert adjustable or non-adjustable}
to 14-7 Instructions to Bidders	Contract prices shall be exempted from taxes and customs duties {insert Yes or No}
15-1 Instructions to Bidders	The currency (s) of the bid and payments shall be by one of the alternatives shown later----- and as follows: <b>First alternative:</b> (bidder submit his entire bid in Iraqi dinar: a. Prices of units and sums of the items priced by the bidder in the table of quantities shall be in Iraqi dinar completely (hereinafter called "local currency"). In the case of bidder predicts that he needs another currency to cover some of the supplies involved in the core of the works from foreign countries (hereinafter called "requirements of foreign currency"), he shall specify this according (to the table (c) in the tender attachment) ratio or ratios of what is represented by the amounts required for this purpose from bid amount (without reserved amounts) to cover the cost of its purchase in foreign currency that , provided that the number of currencies offered shall not be more than three. b. The bidder shall list the exchange rate of foreign currencies in Iraqi currency and also the ratios required for the amounts in foreign currency from the bid amount referred to in (a) above, in table (c) of the bid attachment,

	<p>and to adopt this in all payments under the contract so the bidder shall not bear any risks for currency conversion</p> <p><b>Second alternative:</b> (allow bidders to submit their prices in Iraqi and foreign currency):</p> <p>a. The contractor shall price the units and the sums of the items of the table of quantities separately with the following currencies:</p> <p>1- Supplies involved in the core of the works that the bidder expects to be provided within Iraq shall be in Iraqi dinar and shall be hereinafter called the "local currency".</p> <p>2- Supplies involved in the core of the works that the bidder expects to be supplied from foreign countries shall be in foreign currency determined by the bidder, provided that it shall not be more than three.</p>
18-1 Instructions to Bidders	Period of Validity of Bids shall be ----- day
18-4-a Instructions to Bidders	In case that review and adjustment of price for fixed price bid is allowed, the adjustment coefficient (factor) -----
18-4-b Instructions to Bidders	Allow review and adjust prices for parts of the fixed-price contracts for contracts with price adjustable by adopting
19-1 Instructions to Bidders	<p>Bid guarantee {insert required or not required}</p> <p>{Insert type of bid guarantee, bank letter of guarantee or a certified check or specify others} {Insert the amount and currency of the bid guarantee}.</p>
19-2-c Instructions to Bidders	Insert types any other form required.
20-1 Instructions to Bidders	In case of requiring additional copies of the bid {Insert the required number of the additional copies}.
20-2 Instructions to Bidders	The authorization letter for the signing of the bid by the bidder shall contain the following:
19-6	If the bidder is a joint venture, they shall submit the bid guarantee in the name of the joint venture (insert any other conditions)
D- Submission And Opening of Bids	

22-1 Instructions to Bidders	<p>For the purposes of bid submission, bid shall be submitted to the employer's address shown hereinafter only.</p> <p>Name of person authorized to receive: Floor &amp; room No.: Street No.: City: Country: Deadline for submission of bids: Time: Date: Submission of bids electronically {insert allowed or not allowed} In the case of allowing the submission of bids electronically, the procedures followed will be as follows:----- ----- -----</p>
25-1 Instructions to Bidders	<p>Bids opening shall be at the following address: Street No.:</p> <p>Floor &amp; room No.:</p>
	<p>City: Country: Time:</p> <p>Date: In the case of allowing the submission of bids electronically, the opening procedures will be as follows:----- - -----</p>
25-3 Instructions to Bidders	<p>Signing of Bid Letter and table of quantities of the Bidder by employer's representatives (Bid Opening Committee) {insert required or not required} if it was required, the following procedures shall be adopted: -----</p>
<b>D. Evaluation and Comparison of Bids</b>	

32-1 Instructions to Bidders	<p>The Iraqi currency shall be adopted in the evaluation and comparison of bids, and foreign currencies adopted in the bid shall be converted to it for this purpose. The source of conversion rate shall be those mentioned in the bulletin issued by {insert the bulletin issuer}</p> <ul style="list-style-type: none"> <li>- The date of the conversion rate shall be the for the bulletin issued on {insert the specified date}</li> <li>- The foreign currencies mentioned in the bid shall be converted to the Iraqi dinar by adopting one of the alternatives mentioned hereinafter for the purposes of bid comparison</li> </ul> <p><b>First Alternative:</b> <u>When the entire bid amount will be in Iraqi dinar:</u>  <b>First step:</b> the employer shall be segmenting the bid amount after correcting the amount under article 31 to the amounts specified to it in foreign currencies by adopting the exchange rate specified by the Bidder under article (15-1).  <b>Second step:</b> the employer shall convert the amounts which their payment is determined in foreign currencies (after excluding the reserved amounts with keeping the amount of the paragraphs quoted by daily wages when they are required for the purposes of competition) to the Iraqi dinar according to the selling price of foreign currency and at the date specified for them above.  <b>Second alternative:</b> <u>when the bid amount is in Iraqi dinar and foreign currencies:</u>  The employer shall, after correcting the bid amount under article (31), convert the amounts specified in various foreign currencies (after excluding the reserved amounts with keeping the amount of the paragraphs quoted by daily wages when they are required for the purposes of competition) to the Iraqi dinar according to the selling price of foreign currency in the foreign currency exchange bulletin and at date specified above</p>
33 Instructions to Bidders	<p>Preference margin for local bidders is allowed {insert Yes or No} and if Yes {insert the amount of the margin} as well as the methodology to be followed:</p>
34-4	<p>Insert ( it is permitted, not permitted) to segment the works and right of the bidder to submit his prices for segments of his works or a group of segments</p>

## **Section Three: Evaluation & Qualification Criteria**

### **(Without Pre-Qualification)**

This section contains the criteria that are require from the employer to adopt them to evaluate bids and qualify bidders under articles (34) and (36) of the Instructions to Bidders and any systematic indicators or other criteria for this purpose, shall not be adopted. The bidders shall provide all the information required under the forms specified in Section four (bid forms).



## 1. Evaluation of Bids

In addition to the criteria listed in paragraph 2-34 (a- e) of the Instructions to Bidders, the following criteria shall be adopted:

### 1-1 Comparison of the proposal with the requirements specified in Bid Documents

### 1-2 Multiple Contracts:

In the event of approval for the segmentation of works and award it in multiple contracts (when this principle is possible to be adopted based on the project nature) and allow bidders to contract on one of them or more than one pursuant to the provisions of article (34-4) of the Instructions to Bidders, the methodology set forth below shall be followed in the evaluation of bids:

.....  
.....

### 1-3 Alternative Time Necessary for Completion (the Contract Period):

In the event of allowing bidders to propose an alternative time for completion (the contract period) pursuant to the provisions of article (13-2) and the adoption of the methodology set forth below in the evaluation of bids:

.....  
.....

### 1-4 Alternative Technical Proposal:

In the event of allowing bidders to provide an alternative technical proposal for the works pursuant to the provisions of article (4-13), the methodology set forth below shall be adopted:

.....  
.....

Qualifications and Qualification Criteria				Conformity Requirements			Documentation
	Subject	Requirements	Individual Company	Joint Venture or Organization			Requirements of Application
				Partners Together	Each Partner	At least One Partner	
2.1 Eligibility							
2.1.1	Nationality	Nationality according to Article (4-2) of the Instructions to Bidders	Requirements shall be met	The Established or under establishment project shall meet the requirement	Requirements shall be met	not required	According to legal qualification forms no. (1-1), (1-2) with the required enclosures
2.1.2	Conflict of Interests	There is no conflict of interests as shown in Article (4-3) of the Instructions to Bidders	Requirements shall be met	The Established joint venture or under establishment project shall meet the requirement	Requirements shall be met	not required	Form of Bid Submission
2.1.3	Disqualification by the Employer	Not placed in black list of Employer in accordance with Para (4-4) of the Instructions To Bidders	Requirements shall be met	The Established or under establishment joint venture shall meet the requirement	Requirements shall be met	not required	Form of Bid Submission
2.1.4	Companies Owned by Government	Compatible to condition specified in Para (4-5) of the Instructions to Bidders	Requirements shall be met	Requirements shall be met	Requirements shall be met	not required	According to the qualification forms no. (1-1), (1-2) with the required enclosure
2.1.5	Disqualification issued by the United Nations	Not disqualified by the employer or in accordance with a resolution issued by the United Nations/Security Council to participate in the tender according to Para (4-7) of the Instructions to Bidders	Requirements shall be met	The Established project shall meet the requirements	Requirements shall be met	not required	Bid Submission Form

Qualifications and Qualification Criteria			Requirements of Conformity				Documentation
	Subject	Requirements	Individual Company	Joint Venture or Organization			Requirements of Application
				Partners Together	Each Partner	At least One Partner	
2.2 Previous Not implemented Contracts							
2.2.1	Previous Not implemented Contracts	No contracts that were not implemented appeared during the previous years_____ ( ) years up to the date of bid submission depending on information about finally resolved disputes. The disputes that were resolved according to the mechanism of resolving disputes and claims adopted for each contract and all the procedures of appeal were used against them for interest of bidder	Requirements shall be met solely or as a partner within previous joint venture or still continuing	not required	Requirements shall be met solely or as a partner within previous joint venture or that is still continuing	not required	According to the forms – Previous Not implemented Contracts
2.2.2	Suspended Claims	All suspended claims will not altogether constitute more than % ( * ) of net dues of the bidder and they will be treated as resolved problems against the bidder.The amount of the suspended contracts/total amounts for the last (3-5 years) for the purpose of comparison: the equation result shall be zero or equal to (50%)*	Requirements shall be met solely or as a partner of previous bank venture or still continuing	not required	Requirements shall be met solely or as a partner within previous company project or that is still continuing	not required	According to the forms – Previous Not implemented Contracts

\* (1) it usually shall be between (30%- 50%) of the present net worth of the bidder.

Qualifications and Qualification Criteria			Requirements of Conformity				Documentation
Ser	Subject	Requirements	Individual Company	Joint Venture or Organization			Requirements of Application
				Partners Together	Each Partner	At least One Partner	
2.4 Financial Position							
2.3.1	Previous Financial Performance	To submit the balance sheet audited by chartered accountants, and in case it is not obliged to submit thereof, it is possible to submit any financial document accepted by the employer for the previous years (    ) stating the financial capability and profit forecast of the bidder.	Requirements shall be met	not required	Requirements shall be met	not required	According to the Financial Positions Forms No. 1, with required enclosures
2.3.2	Annual Revenues Average	The minimum of Annual Revenues Average of the bidder amounts to _____, calculated from the total received payments for the implemented works of the completed contracts or those continuing during the years (    )	Requirements shall be met	Requirements shall be met	He shall meet with percentage of (    ) % of the requirements	He shall meet with percentage of (    )% of the requirements	According to the Financial Positions Forms No. 2
2.3.3	Financial Resources	The bidder shall clarify the financial capability and providing financial resources such as cash liquidity, non-mortgaged properties, due debts to him and any other resources, excluding the advance payments expected to be received to cope with: 1- Cash liquidity requirements _____ Iraqi Dinar Or 2- Cash liquidity requirements of project and other obligations.	Requirements shall be met	Requirements shall be met	He shall meet the requirements with a percentage of (    )%	He shall meet the requirements with a percentage of (    )%	According to the Financial Positions Forms No. 3  According to the Financial Positions Forms No. 4

Qualifications and Qualification Criteria			Requirements of Conformity				Documentation
	Subject	Requirements	Individual Company	Joint Venture or Organization			Requirements of Application
				Partners Together	Each Partner	At least One Partner	
2.4 Experience							
2.4.1	General Experience	The previous experience in the field of contracting as contractor or subcontractor, or contracts management for a period not less that ____ (    ) years before the deadline of bid submission, with an annual activity of nine months at least.	Requirements shall be met	not required	He shall meet the Requirements	not required	According to the Previous Experience Form No. 1
2.4.2	Specialized Experience	A- The participation in the capacity of a contractor, contracts management or subcontractor in ____ (    ) contracts, for the ____ (    ) previous years, with an amount not less that ____ (    ) of implementing works of contracts similar to this contract with full success and quality, and similar to means work volume, complication and the methods and technology used therein, which mentioned in Section Six of the work	Requirements shall be met	He shall meet the Requirements	not required	He shall meet the Requirements	According to the Previous Experience Form No. 2 (A)
2.4.3	Specialized Experience	B- For the purposes of what is stated above or any other contracts implemented during the period specified in 2.4.2 (A) the minimum experience in the following main activities [insert list of activities].	Requirements shall be met	Requirements shall be met	not required	Requirements shall be met	According to the Previous Experience Form No. 2 (B)

### **3-5 Staff**

The bidders have to demonstrate the availability of staff for key positions to implement the contract and achieve the following requirements:

<b>Ser.</b>	<b>Position</b>	<b>Total experience from executing the ) years works for ( )</b>	<b>Specialized experience in similar works ( years</b>
1.			
2.			
3.			
4.			
5.			

The bidder shall submit the details of the staff suggested to be used in implementing the contract, specifying their previous experiences according to the forms set out in part four (bid forms).

### **3-6 Equipment**

The bidder shall demonstrate his ownership or possession of the main equipment listed later on:

<b>Ser.</b>	<b>Type of Equipment and its Specifications</b>	<b>Quantity Required</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		

The bidder shall submit additional details of the equipment suggested to be used in implementing the contract according to the forms set out in part four (bid forms).

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## Form of Bid Submission

Date: Tender No.:  
Invitation Letter No.:

To: (Name and Address of Employer)

We, the undersigned, declare that:

- a- We confirm that we have studied and checked the bid documents and we have no reservations regarding it and to any of the amendments that were concluded according to article (8) of the instructions to bidders .....
- b- We submit our offer to execute the works described later on according to what is specified in the bid documents  
.....  
.....
- c- The total price of our bid, after excluding any discounts stated in our bid, and described in Para (D) hereunder, amount to:  
.....  
.....
- d- The discounts stated in our bid and its method of application is as shown below  
.....  
.....  
.....  
.....
- e- Our bid is valid for ..... days as from the final date specified to deliver the bid, in the bid documents, and it remains binding and accepted by us until completion of its period of validity.
- f- In case of accepting our bid, we undertake to submit the good performance guarantee aforementioned in the bid documents and attend to sign the contract according to the dates specified in paragraphs (40-2) and (41-1) of the instructions to bidders, otherwise, the provisions of paragraph (41-2) of the instructions to bidders are applied against us.

- g- We confirm that we, our subcontractors or suppliers hold or will hold nationality certificates from the eligible countries according to the provisions of article (4-2) of the instructions to bidders.
- h- We confirm that there is no conflict of interests to us or to any of our subcontractors or suppliers to any part of the contract aforementioned in article (4-3) of the instructions to bidders.
- i- We confirm our non-participation in any other bid except for this one, in any capacity whether for the bidder or a subcontractor, pursuant to the provisions of article (4-3) of the instructions to bidders except the alternate bids submitted by us according to article (13) of the instructions to bidders.
- j- We confirm that no decision was issued by **the Ministry of Planning or any other legally authorized party binding to the State of Iraq, including our ineligibility**, or placing us in the black list, and our subcontractors or suppliers have no right to any part of the contract, as well as no decision was issued by the United Nations / Security Council in this regard.
- k- We confirm that we are not a governmental entity / or we are a governmental entity which fulfills the requirements specified in article (4-5) of the instructions to bidders.
- l- We state that we have paid / or will pay gifts or fees related to the contracting procedures or implementing the contract.

Name of Recipient	Address	Reason	Amount

(If payment was not made or will not be made to anyone, then mark that with "none")

- m- We are aware that this bid and your written approval thereof according to the letter of acceptance (awarding) which will be issued later, shall be as a contract binding us until preparing an official contract text and implement it, **(and in case that we refrain from signing the contract, we shall be bound to bear the legal and financial consequences incurred upon us as a result of that, according to the professional provisions in this regard, which are stipulated in the legal legislations of the government contracts and their procedures in the provisions of this document)**.
- n- We are aware that you are not obliged to accept the lowest bids or any other bid received by you.
- o- We undertake to take all actions to ensure, that our employees or any person works for us, will not practice bribery.

Name of Bidder:

Position:

Signature:

Name of the Authorized Person to Sign on our Behalf:

Dated:

Day/Month/Year

## **Annexes of the Bid**

### **Price Adjustment Data Schedules**

In schedules (A), (B) and (C), listed later on, the bidder has to specify the following (A) its amount payable in Iraqi currency, (B) the suggested sources, basic value and indicators of these components in various currencies, (C) the weight proposed for each component in the payable Iraqi and foreign currency, (D) the adopted conversion factor for the purposes of transferring the amounts into foreign currency, in large and complex contracts, it might be required to use several equations to adjust the prices according to the nature of work clauses.

### Schedule (A) – Payment in Iraqi Currency

Code of Indicators for Para Cost Components	Description of Indicators	Source of Indicators Cost	Basic Value and Date	Amount in Bidder's Currency	Weight of Components Proposed by the Bidder
					a-
					b-
					c-
					d-
					e-
<b>Total</b>					1

### Schedule (B) – Payment in Foreign Currency

Code of Indicators for Para Cost Components	Description of Indicators	Source of Indicators Cost	Basic Value and Date	Amount in Bidder's Currency	Amount Payable in Foreign Currency	Weight of Components Proposed by the Bidder
						a-
						b-
						c-
						d-
						e-
<b>Total</b>						1

### Schedule (C) – Summary of Payment Currencies

Alternative (A) – In case the bid was in Iraqi Dinar

For the part of work ..... [Insert the name of the part of works]

Name of Payment Currency	(A) Amount of Foreign Currency	(B) Exchange Rate (Dinar against what is represented by the Foreign Currency Unit)	(C) Equivalent in Dinar A x B	(D) <b>Percentage of What it Represent of the Bid Net Amount</b>
				$\frac{100 \times C}{\text{Bid Net Amount}}$
Iraqi Currency		1.00		
Foreign Currency No. (1)				
Foreign Currency No. (2)				
Foreign Currency No. (3)				
Bid Net Amount				100.00
Reserve Amount in Iraqi Dinar				

### **Schedule: Summary of Payment Currencies**

Alternative (B) – In case of paying in several currencies

(According to article (15-1) of the instruction to bidders)

Summary of payment in currencies: ..... [Insert the name of the part of works inserted therein]

<b>Name of Currency</b>	<b>Amount Required to be Paid according to the Bid</b>
Iraqi Currency	
Foreign Currency (1)	
Foreign Currency (2)	
Foreign Currency (3)	



## **Bills of Quantities**

## Bills of Quantities

Schedule No. (    )

Item No.	Item Description	Unit	Qty	Price in figure and writing	Amount for total item in figure and writing
Total of Schedule No. (Carried forward to summary schedule page .....)					

**Work Schedule by Daily Wage no. (1) (Fees of Workers)**

Item No.	Item Description	Unit	Average of Productivity	Wages Per Hour in figure and writing	Amount in figure and writing
<b>Total</b>					
Adding a percentage of ..... for the administrative charges and due profits for the contractor according to Para (3B)					
The Final Total (Carried forward to the summary page .....) )					

The mentioned percentage is filled in the schedule by the bidder

**Work Schedule by Daily Wage no. (2) (Prices of Materials)**

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Required Quantity</b>	<b>Price in figure and writing</b>	<b>Amount in figure and writing</b>
<b>Total</b>					
Adding a percentage of ..... for the administrative charges and profits					
The Final Total (Carried forward to the summary page .....)					

**Schedule of Items Implemented by Daily Wage no. (3) (Fees of Used Equipment)**

[illegible]

### Abstract of Work Cost by Daily Wage

Summary	Amount in figure and writing	Percentage of Amount in Foreign Currency in figure and writing
1- Total Items of Work by Daily Wage (Fees of Workers)		
2- Total Items of Work by Daily Wage (Prices of Materials)		
3- Total Items of Work by Daily Wage (Equipment of the Contractor)		
<b>Items Total of Work by Daily Wage (Carried forward to the summary page ....)</b>		

### Summary of Reserve Items Cost

Bill of Quantities No.	Item No.	Description	Amount <b>in figure and writing</b>
1.			
2.			
3.			
4.			
<b>Total of Reserve Items Amounts <b>in figure and writing</b> (Carried forward to the summary page .....)</b>			

## Final Summary

**Name of Contract:**  
**Number of Contract:**

General Summary	Page No.	Amount in figure and writing
Schedule No. (1)		
Schedule No. (2)		
Schedule No. (3)		
..... Etc		
Total of the above schedules with the reserve amounts	(a)	
Total of work by daily wage	(b)	
General reserve	(c)	
Final total of (a + b + c)		



## **Technical Proposal**

- Organizational Structure of the Site
- Work Methodology
- Preparation Methodology
- Execution Methodology
- Workers
- Equipment
- Specialized Schedule for Equipment
- Technical Literature Issued by the Manufacturer of the Equipment and Items
- Other

## **Organizational Structure of the Site**

## **Work Methodology**

## **Preparation Methodology**

## **Execution Methodology**

### Schedule of staff

Form of staff no. (1): Proposed names of the key staff, the bidders have to submit a list of the efficient key staff to fulfill the requirements specified in section three, and submit the information regarding their experiences according to the following schedule:

1	Name:
	Position:
	Scientific Qualification:
	Experience:
2	Name:
	Position:
	Scientific Qualification:
	Experience:
3	Name:
	Position:
	Scientific Qualification
	Experience
4	Name:
	Position:
	Scientific Qualification:
	Experience:

As specified in section three

### Form of staff no. (2): Experience of the key Staff

--

Name of Bidder:

Position		
Personal Information	Name	Date of Birth
	Work Experience	
Current Position	Name of Employer:	
	Work Address:	
	Telephone:	Person in Charge (Director / Employee / Personnel)
	Fax:	Email:
	Position Title:	Employer's Years of Service

Hereunder is the summary of work experience for the past (20) years as from the current date, explaining any technical and administrative experiences related to the current project.

From	To	Company / Project / Position / The Related Technical and Administrative Experiences

## Equipment Form

The bidder has to submit the information to demonstrate accurately the possibility of insuring the needs of the main equipment required to implement the contract mentioned in section three (Evaluation and Comparison Criteria), which requires filling a separate form for each equipment listed or proposed by the bidder.

Type of Equipment		
Information About the Equipment	Name of Manufacturer	Model and Horsepower
	Productivity	Manufacturing Year
Current Status	Current Work Address	
	Current Work Description	
Its Source	Insert the Source of the Equipment or Machinery Owned by the bidder    Rented    Leased    Specifically Manufactured for	

### Omit the following information of equipment belonging to the bidder

Ownership of Equipment	Name of Owner of the Equipment	
	Owner's Address	
	Telephone: Fax:	Name and position of the Owner:
		Email:
Agreement	Details of Leasing , Renting and Manufacturing the equipment required for the project	



## **Specialized Schedules for Equipment**

## **Technical Literature Issued by the Manufacturer of the Equipment and Items**

**Other**

### **Qualifications of Bidders Required in case of not conducting the Prequalification**

In order to demonstrate that the bidder has qualifications mentioned in section three (Evaluation and Qualification Criteria) to implement the contract, the bidder has to submit the required information according to the forms listed later on.

**Form no. (1) / Information Form of the Qualifications of Bidders (Individual Company)**

<b>Information of the Bidder</b>	
Legal Name of the Bidder	
In case of joint venture / the legal name for each partner	
Country of Incorporation	
Date of Company's Incorporation	
Legal Address in the Country of Incorporation	
Authorized Representative of the Bidder / Legal (Name, Address, Telephone, Fax, Email Address)	
<p><b>The Enclosures are Copies of the original Documents listed hereunder</b></p> <p>1- In case of individual company, the items related to incorporation or legal companies federation of the company according to article (4-1), (4-2) of the instructions to bidders.</p> <p>2- The authorization of the representative of the aforementioned joint venture according to article (20-2) of the instructions to bidders.</p> <p>3- In case of joint venture, a joint venture agreement or a letter of willingness is submitted to establish a joint venture according to Para (4-1) of the instructions to bidders.</p> <p>4- In case of a company owned by the country and any additional documents not inserted in Para (1) above, and conforming to Para (5-4) of the instructions to bidders.</p>	

**Form no. (2) / Information Form of the Qualifications of Bidders (Joint Venture)**  
**Each Company participating in the Joint Venture has to fill this Form**

<b>Information of the Joint Venture or the Specialized Subcontractor</b>	
Legal Name of the Bidder	
Names of Companies in the Joint Specialized the or Venture Subcontractor	
Country of Incorporation of Joint Venture Establishing Company and the Specialized Subcontractor	
Joint of Incorporation of Year Venture Establishing Company and the Specialized Subcontractor	
Legal Address in the Country of Incorporation for Partners of the Joint Venture and the Specialized Subcontractor	
Name, Address, Telephone, Fax and Email Address of the Representative Authorized by the Joint Venture and the Specialized Subcontractor	
<p align="center"><b>The Enclosures are Copies of the original Documents listed hereunder</b></p> <p>1- Documents of incorporating the companies federation or the legal joint venture named above according to Para (4-1) of the instructions to bidders.</p> <p>2- Letter of Authorization of the representative of the joint venture named above according to Para (20-2) of the instructions to bidders.</p> <p>3- In case the companies owned by the country and the documents that prove the legal and financial independence and work according to the commercial laws according to Para (5-4) of the instructions to bidders.</p>	

### Form of Unresolved Lawsuits

This form is filled by each bidder, if it was an individual company or each partner in the joint venture.

Unresolved Claims			
Year	Subject of Claim	Value of Unresolved Claim in Dollar in figure and writing	Percentage of Unresolved Claim Value from Net Capital in figure and writing

### Financial Form (1) Financial Situation

This form is filled by each bidder, if it was an individual company or each partner in the joint venture.

Financial Data for Three Years in Dollar		
Year 1	Year 2	Year 3

### Information from the Balance Form

<b>Total Assets</b>			
<b>Total Debts</b>			
<b>Net Capital</b>			
<b>Current Assets</b>			
<b>Current Debts</b>			

### Information from the Certificates of Financial Position

<b>Total Revenues</b>	
<b>Before Profits Tax Accounting</b>	
<b>Profits after Tax Accounting</b>	

- ☐ Enclosures are copies of the financial situation certificates (final balance including all the notes and income certificates for the past three years as shown in conformity with the following conditions:
- All these documents reflect the financial situation of the bidder or the partners in the joint venture and it does not insert mother companies emanating therefrom.
  - The previous financial situation shall be issued by a legal auditor.
  - The previous financial certificates shall be complete and include all the notes mentioned in the financial certificates.
  - The previous financial certificates shall represent the previous accomplished items which a certificate of legal auditing was issued thereon (Interim Financial Certificates not required and will not be accepted).



## Financial Form (2) Average of Annual Revenues for Construction Works

To be filled by the bidder and each partner in the joint venture

Annual Revenues Date for Three Years (Construction)			
Year	Annual Revenues in the Adopted Currency	Percentage of Transfer in Dollar	Amounts in Dollar
Annual Revenues Average of Construction Works			

The information of annual revenues submitted by the bidder (individual company) or each partner in the joint venture shall represent the amounts of accomplished works and by which advances were submitted to the employer each year for the continuous or accomplished works, after transferring it to dollar at the prevailing exchange rate at the end of the year.

### Financial Form (3) Financial Resources

Specify the financial sources proposed to finance the contract i.e. current accounts, non-mortgaged property assets, debts and any financial resources, the final receivables of current obligations which ensure securing cash liquidity for this contract or contracts as specified in section three (Evaluation and Comparison Criteria)

Financial Resources		
Ser.	Financing Sources	Amount in Tender's currency or any other currency
1		
2		
3		

### Financial Form (4) Current Contractual Obligations / Continuous Works

Each bidder as an individual company or any partner in the joint venture shall submit the information of financial obligations of all concluded contracts or to which letters of awarding were issued or for contracts that are close to completion and to which no letter of acceptance was issued.

Name of Contract	Address of Employer's Representative, Telephone, Fax and Email Address	Value of Unaccomplished Works <b>in Tender's currency or any other currency equivalent to Dollars</b>	Expected Date of Completion	Average of Paid Advances During the Past Six Months <b>in Tender's currency or any other currency equivalent to Dollar / Month</b>

### Experience Form (1): General Experience in Constructions Field

This form is filled by each bidder, if it was an individual company or each partner in the joint venture.

General Experience in Constructions Field				
Month and year of commencement	Month and year of completion	No. of years	Name and introduction of contract, name and address of employer, summary description of works executed by the bidder	Tasks of bidder in the executed works

## Experience Form (2A): Specialized Experience in Constructions

To fill one form for each contract

Contracts with nature and volume similar to this contract		
No. of Contract – from -	Introduction of Contract	
Date of Awarding	Date of Completion	
Bidder's Role in Contract	<div style="display: flex; justify-content: space-between;"> <span>Contractor</span> <span>Contract Management Contractor</span> </div> <div style="margin-top: 10px;"> <span>Subcontractor</span> </div>	
Total Value of Contract	<b>Dollars</b>	
If he was a partner in a joint venture or subcontractor, specify the volume of commitment of the total amount of the contract	Percentage of the total amount of the contract	Amount of commitment
Name of Employer, his address, telephone, fax and email		
Describe the similarities according to the criteria specified in Para 2-4-2(A) of section three		

## Experience Form (2B): Specialized Experience in Main Activities

To fill one form for each contract

Contracts with similar main activities		
No. of Contract	Introduction of Contract	
Date of Awarding		Date of Completion
Bidder's Role in Contract	Contractor                      Contract Management Contractor	
	Subcontractor	
Total Value of Contract	<b>in Tender's currency or any other currency</b>	
If the partner was in a joint venture or subcontractor, specify the volume of total commitment described in the contract	Percentage of the total amount of the contract	
	Amount in Dollar	
Name of Employer, his address, telephone, fax and email		
Describe the similarities according to the criteria specified in Para 2-4-2(B) of section three		

## Bid Guarantee Form (Bank Guarantee)

[If needed, the bank/bidder fills this bank guarantee form according to the instructions aforementioned between the brackets.]

---

[Insert the Name of the Bank, Address of the Branch or the Issuing Bureau]

**Beneficiary:** [Insert the name and Address of the Employer]

**Date:** [Insert Date]

**Bid Guarantee No.:** [Insert Number]

We were informed that [Insert name of bidder, if it was joint venture then insert full legal names of partners] (hereinafter called "Bidder") has given you his bid dated [Insert Date] (hereinafter called "Bid") to implement [Insert Name of Contract] according to the invitation to the bidders no. [Insert Number].

Moreover, we are aware, according to your conditions that bids must be supported by a bid guarantee.

According to the request by the bidder, we [Insert Name of Bank] are committed according to this document to pay you any amount or amounts that does not exceed in total the amount of [Insert amount in numbers] ([Insert amount in writing]) Iraqi Dinar once we receive from you the first written request accompanied by a written affidavit stating that the bidder has violated his obligation (obligations) under the conditions of the bid, because the bidder:

(A) Has withdrew his bid during the validity period of the bid specified in the bid form, or

(B) Informing him that his bid was accepted by the employer during the validity period of the bid, (1) failure or refusal to implement the contract agreement, if required, or (2) failure or refusal to submit a good performance guarantee according to the instructions to bidders.

The validity period of this bid guarantee ends: A) if the bidder was awarded the bid, once we receive the contract copies signed by the bidder and good performance guarantee issued to you by the bidder, or B) if the bid was not awarded to the bidder, achieve the closest of the following two events: (1) our receipt of a copy of your notification to the bidder that the bid was not awarded, or (2) after twenty eight days from the completion of validity period of the bidder's bid.

Therefore, any request of payment under this guarantee must be received by us in the bureau at that date or before it.

This guarantee is subject to the unified laws of the guarantees request, **issued in accordance with the Iraqi Law**

---

[Signature (signatures) representative (representatives) authorized (authorized)]

## Section Five: Eligible Countries

Qualifying to provide commodities or execute the works or services in the contracts financed by the employer:

1. The employer has the right to allow organizations and personnel of all countries to supply commodities or execute the works or offer services to the projects financed by the Iraqi government, and as an exception, it prevents organizations in countries or the commodities manufactured in the countries from participating in tenders in the following cases:
  - A- The legislations or prevailing regulations prohibit the employer's country from establishing commercial relations with that country, provided, the employer is convinced that such prohibition will not prevent achieving fruitful competition to supply the commodities or execute the works.
  - B- In response to the decision issued by the United Nations / Security Council under chapter seven of the constitution of the United Nations which prohibit the country of the employer from contracting to import any commodities or execute the works or provide services with that country or pay any amounts to individuals or entities in that country.
2. For the review of the bidders thereon, the commodities, services and organizations in the countries mentioned below are prohibited from participating in this tender according to the mentioned instructions.

a) Regarding Para (1-A)

.....

.....

b) Regarding Para (1-B)

.....



## **Part Two**

### **Work Requirements**

#### **For the contracts of executing Works**

(To be filled by the Contracting Party accurately)

## Section Six – Work Requirements

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## Scope of Work

## Specifications

## Plans

## **Bills of Quantity**

## **Additional Information**

**Part Three – Conditions of the Contract and Forms of the Contract  
For the Contracts of executing works**



**Section Seven**

**General Conditions**

**For the Contracts of executing works**

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## **Article One: General Provisions**

### **1-1 Definitions:**

The following words and terms wherever mentioned in this Conditions of Contract (including the general and the special) shall have the meaning assigned to them below, and the words that refer to persons or parties shall include companies and other legal entities, unless the context requires otherwise:

#### **1-1-1 The contract:**

##### **1-1-1-1 The contract**

Shall mean the contract agreement, the document agreed upon and shall include, Letter of Award, Bid Acceptance Letter, these conditions, specifications and drawings, and any other documents (if any) listed in the contract agreement or in the Letter of Award.

##### **1-1-1-2 Contract Agreement**

Shall mean contract agreement referred to in article (1-6)

##### **1-1-1-3 Letter of Award (Letter of Acceptance):**

Shall mean the official letter of award of the bid letter signed by the employer and inclusive of any memorandums agree and signed by the parties. And if the Letter of Award (**Letter of Acceptance**) is not being issued then this term shall mean "contract agreement", and then the date in which this "contract agreement" is signed shall be the date of the issuance of Letter of Award.

##### **1-1-1-4 Bidding Form:**

Shall mean the document named Bid Letter or letter of bid offer that has been completed by the contractor, and it includes the works-related offer signed by the contractor and submitted to the employer.

##### **1-1-1-5 The Specifications:**

Shall mean the document named the "Specifications" that shall determine the works' specifications as included in the contract and any amendments or additions thereon made in accordance with provisions of the contract.

##### **1-1-1-6 Drawings:**

Shall mean "work's drawings" as covered in the contract and any additional and amended drawings issued by the employer (or his representative) under the provisions of the contract.

##### **1-1-1-7 Tables**

Shall mean the document or documents named the "Tables" as completed by the contractor and submitted with the Bidding Forms, and shall be included to contract documents as such and these tables may include tables of quantities, data, lists, tables of prices and / or wages.

##### **1-1-1-8 The Bid:**

Shall mean the Submission of Bid Form and all what is provided by the contractor of other documents with it, as mentioned in the contract.

##### **1-1-1-9 "Tables of Quantities" and "Tables of Daily PAID Work" and "Tables of Currency Payments":**

Shall mean the documents named as such "if any" included in the tables.

##### **1-1-1-10 Contract Data**

Shall mean the pages completed by the "employer" and named the "Contract Data" that forms part (A) of the special conditions.



## **1-1-2 Parties and persons:**

### **1-1-2-1 The party:**

Shall mean the employer or the contractor as the context indicated

### **1-1-2-2 The employer:**

Shall mean the person named as employer in the **contract data** as well as his legal successors.

### **1-1-2-3 The contractor:**

Shall mean the person (s) named as contractor in the Bid Letter approved by the employer, and it includes as well his legal successors.

### **1-1-2-4 The engineer:**

Shall mean the person appointed by the employer to carry out the tasks of the engineer for the purposes of this contract, and named in the **contract data** as such, or any other person appointed by the employer as a substitute for the engineer from time to time, and he shall notify the contractor of such appointment according to paragraph (3-4), (Engineer Replacement).

### **1-1-2-5 Contractor's Representative:**

Shall mean the person named by the contractor to represent him in the contract, or his designee from time to time under paragraph (4-3) to act on his behalf.

### **1-1-2-6 Employer's Personnel:**

Shall mean the engineer and his assistants referred to in paragraph (3-2) and other staff and workers of the engineer and the employer, as well as any of the personnel who the engineer or the employer notify the contractor that they are members of the employer

### **1-1-2-7 Contractor staff**

Shall mean the contractor representative and all employed by the contractor at the site, including the employees, workers and others of the contractor's group or the group of any subcontractor and other persons who assist the contractor in the implementation of the works

### **1-1-2-8 Subcontractor:**

Shall mean any person named by the contractor as subcontractor, or any person appointed as well to implement part of the works, and the legal successors of any of them

### **1-1-2-9 Settlement of Disputes Council (Disputes):**

Shall mean the person or the three persons named as such in the contract, or any other persons appointed under the provisions of paragraph (20-2) or (20-3)

### **1-1-2-10 the Federation International des Ingénieurs - Conseils "FIDIC"**

Shall mean the International Federation of Consulting Engineers

## **1-1-3 Dates, Tests, Terms and Completion:**

### **1-1-3-1 Basic Date**

Shall mean the date preceding the deadline for depositing of bids by (28) days.

### **1-1-3-2 Commencement Date:**

Shall mean the date determined for the commencement of work and notice is given in respect thereof according to paragraph (8-1)

### **1-1-3-3 the Completion Period (period of implementation of works):**

Shall mean the period specified for the completion of works or any part thereof (as the case may be) under paragraph (8-2) calculated from the commencement date, as identified in the **contract data**, with any extension for this period made under paragraph (8-4).

**1-1-3-4 Tests on Completion**

Shall mean those tests stipulated in the contract or agreed between the parties, or which are requested under change orders, that are made under the provisions of "Article Nine" before the receiving of the works or any part thereof (as the case may be) from the employer.

**1-1-3-5 The Initial Acceptance Certificate of works (Initial Acceptance Minutes):**

Shall mean the initial acceptance certificate of works that is issued under the provisions of "Article Ten"

**1-1-3-6 After-Completion Tests**

Shall mean the tests (if any) stipulated in the contracts that are conducted according to the specifications, after the works or any part thereof (as the case may be) is received by the employer.

**1-1-3-7 Maintenance Period:**

Shall mean the period that has been determined under paragraph (11-1) to give notice to correct the defects in works or any part thereof (as the case may be) extended for 12 month unless otherwise stated in the **contract data** (with any extension thereof made under paragraph (11-3)) calculated from the date of completion of works, or any part thereof, as been specified in the initial acceptance certificate of the works under paragraph (10-1).

**1-1-3-8 Final Acceptance Certificate of the works (Final Acceptance Minutes)**

Shall the mean the certificate issued under paragraph (11-9).

**1-1-3-9 The day**

Shall mean a calendar day, and the year shall mean (365) day.

**1-1-4 Amount and Payments**

**1-1-4-1 Contract amount approved:**

Shall mean the contract amount as approved in the "Letter of Award" against the implementation, completion of works and the correction of any defects therein

**1-1-4-2 Contract amount (actual contract amount):**

Shall mean the contract amount identified under paragraph (14-1) and shall include any amendments thereon made according to the provisions of the contract.

**1-1-4-3 Cost**

Shall mean all costs incurred or will be incurred by the contractor reasonably, inside and outside the site, including administrative expenses or similar, but shall not include the profit

**1-1-4-4 Final Account Certificate**

Shall mean the final account certificate that is issued under paragraph (14-13)

**1-1-4-5 Final Statement of Account:**

Shall mean the final statement of account identified under paragraph (1411)

**1-1-4-6 Foreign Currency:**

Shall mean any currency to be determined for the payment of some part of the contract amount (or all), other than the local currency.

**1-1-4-7 Progress Advance:**

Shall mean any payment certificate to be issued under the provision of article "Fourteen" other than the final account

**1-1-4-8 Local Currency:**

Shall mean the Iraqi currency (Iraqi dinar), or the country of the country where the works are being implemented.

**1-1-4-9 Advance Payment (Advances):**

Shall mean any payment certificate to be issued under the provisions of article "Fourteen"

**1-1-4-10 Reserved Amount:**

Shall mean any amount (if any) to be specified as such in the contract for the purpose of implementing part of the works or supplying materials or mechanical supplies or providing services under paragraph (13-5)

**1-1-4-11 Cash Deductions:**

Shall mean total amounts withheld by the employer for payment under paragraph (14-3), which he shall return under paragraph (14-9).

**1-1-4-12 Statement of Performed Work:**

Shall mean any statement of work performed provided by the contractor as part of the request for advances, under the provisions of "Article Fourteen".

**1-1-5 Works and Implementation Requirements**

**1-1-5-1 Contractor' Equipment:**

Shall mean all devices, machinery, vehicles and other means necessary to implement and deliver works, and repair any defects therein, but shall not include temporary works nor employer's equipment (if any), mechanical supplies, materials or other things that formed or intended to form part of the permanent works.

**1-1-5-2 Implementation Requirements**

Shall mean contractor's equipment, materials, mechanical supplies and temporary works or any of them, as appropriate

**1-1-5-3 Materials:**

Shall mean things of all kinds (non-mechanical supplies) that formed or intended to form part of the permanent works, including supplied materials only (if any) which are required to be provided by the contractor under the contract.

**1-1-5-4 Permanent Works:**

Shall mean the permanent works to be carried out by the contractor under the contract

**1-1-5-5 Mechanical Supplies:**

Shall mean devices, machinery and vehicles formed or are intended to form part of the permanent works, which include transport modes purchased for the employer for the purposes of implementation or operation of the project.

**1-1-5-6 Section:**

Shall mean any section of the works stipulated in the **contract data** as a section of the works (if any).

**1-1-5-7 Temporary Works:**

Shall mean all temporary works of every kind (except for contractor's equipment) which their presence is required at the site for the implementation and completion of permanent works and repair any defects therein.

**1-1-5-8 Works:**

Shall mean permanent and temporary works, or any of them, as appropriate

**1-1-6 Other Definitions:**

**1-1-6-1 Contractor Documents:**

Shall means arithmetical memos, computer programs, drawings, manuals, models and other documents of a technical nature (if any) provided by the contractor under the contract.

**1-1-6-2 The Country:**

Shall mean the Republic of Iraq or any country in which the site (or a significant part thereof) is located and where the permanent works are required to be implemented therein.

**1-1-6-3 Employer's Equipment:**

Shall mean devices, machinery and vehicles (if any) provided by the employer to be used by the contractor in the implementation of works as defined in the specification, but shall not include such mechanical supplies that the employer did not yet receive.

**1-1-6-4 Force Majeure:**

As defined in the "Article Nineteen"

**1-1-6-5 Laws:**

Shall mean all legislations and laws of Iraq (or laws of the counties where the project is located in) and instructions, orders and regulations issued by any public authority formed by law.

**1-1-6-6 Good Performance Guarantee**

Shall mean the guarantee (or guarantees, if any) that are required under paragraph (4-2).

**1-1-6-7 Location:**

Shall mean the premises in which permanent works will be performed thereinto including storage spaces, work spaces and locations in which mechanical supplies and materials are delivered in, as well as any other premises specifically stated in contract being considered part of the location.

**1-1-6-8 Unforeseen:**

Shall mean what an experienced contractor could not expect reasonably on the (basic date) of bid submission.

**1-1-6-9 Change (Change Order):**

Shall mean any change in the works where a change order is issued in respect thereof or approved as a change under the provisions of "Article Thirteen"

## 1-2 Interpretation

In the contract, unless the context requires otherwise:

- a) The words refer to one gender shall include the other gender.
- b) The words refer to the singular shall also include the plural and words refer to the plural shall also include the singular.
- c) Provisions that contain the word "approve" or "approved" or "agreement" are conditioned that such approval be documented in writing.
- d) "In writing" or "written" shall mean putting down in writing by handwriting or typewriter or printing press and electronic printing so that it forms a permanent record. As for marginal words and other headings, they shall not be considered when interpreting these conditions. Unless stated otherwise in **contract data**, profit margin at (5%) of the cost shall be adopted in the phrase (cost + profit margin) wherever mentioned in these conditions.

## 1-3 Communications:

Where these conditions state on giving or issuing any approvals or certificates or consents or estimates or notifications or requests or termination of service, then such communications shall be:

- a) In writing and delivered by hand (against notice of receipt), or shall be send by mail or via a person or transferred electronically as stipulated in **contract data**, and
- b) Delivered or sent to the consignee address indicated in the contract data, however:
  - 1) If the consignee has sent notice of change of address then it shall be sent accordingly.
  - 2) If the consignee did not specify another address when an acceptance or approval is requested, it may be sent to the address where the request is sent from.

It is not permitted to refrain from giving such approvals or certificates or estimates or acceptance or delaying their issuance without reasonable justification, and the party who issue such a notice to the other party or to the engineer, shall send a copy thereof to the engineer or to the other party as the case may be.

## 1-4 Law and Language

This contract shall be subject to Iraqi laws. The Arabic or Kurdish language shall be the "language approved" in the contract and in the communications, unless otherwise provided in the **contract data**.

## 1-5 Priority of documents:

The group of documents that comprise the contract shall be considered interpretative to one another, but for the purposes of interpretation of the contract, the priority of preference among documents shall be according to the following sequence:

- 1) Contract agreement (if any)
- 2) Letter of Award;
- 3) Bid Letter;

- 4) Special conditions (A);
- 5) Special conditions (B);
- 6) General conditions
- 7) Specifications;
- 8) Drawings;
- 9) Tables, and any other documents that form part of the contract

But if it is found out that there is an ambiguity in the documents, or contract with each other, then the engineer shall issue instructions or necessary clarification in respect thereof

#### **1-6 Contract Agreement:**

The Parties shall entered into a contract agreement within the (28) days after the receipt of the Letter of Award by contractor, unless otherwise provided for in the **contract data**. And this agreement shall be according to the form attached to the special conditions. And the Contractor shall also pay stamp duties and other similar expenses (if any) which may be realized by law at the conclusion of this agreement.

#### **1-7 Waiver:**

Any party shall not be entitled to waive the contract or any part thereof, or any benefit or interest in the contract or thereunder. But any party may:

- a) Waive the contract or any part thereof with the prior approval of the other party and other party has the sole discretion in this regard.
- b) Transfer what is due to him or will be due to him of amounts under the contract as a guarantee for the benefit of any bank or financial institution.

#### **1-8 Care of documents and obtain them:**

Specifications and drawings shall be maintained under contractor's care. And unless stipulated otherwise in the contract, the contractor shall provide the engineer with two copies of the contract and any drawings issued later, and the contractor shall bear the expenses of obtaining any additional copies thereof.

As for "contractor documents", they shall remain saved under contractor's care till received by the employer. And unless stipulated otherwise in the contract, the contractor shall provide the engineer with (6) copies of each of the "contractor documents".

The Contractor shall retain on-site a copy of the contract, bulletins referred to in the specifications, contractor's documents (if any), drawings, changes, and other correspondences relating to the contract. The employer personnel shall be entitled to access to all such documents at all reasonable times.

If one of the parties discovered an error or a defect in any of the documents that have been prepared for the purpose to be used in the implementation of works, this party shall notify the other party immediately of such error or defect.

#### **1-9 Delay in Issuing Drawings or Instructions:**

The contractor shall provide the engineer with a written notice when the implementation of the works is delayed due to non-provision of drawings or instructions

by the engineer within a specified period, provided that the period shall be reasonable, and provided that this notification shall include details of the necessary drawings or instructions and the reasons for their issuance, and the date needed, and demonstrating the consequent resulting from the delay in their issuance represented by the impede to work or its delay.

If the contractor incurred a delay and / or any cost as a result of engineer's failure in issuing any drawings or instructions within a reasonable time which he received a notice thereto with stating the reasons needed, the contractor shall give another notification to the engineer to estimate the contractor's dues in respect thereof taking into account paragraph (20-1) in terms of:

a) Any extension in the completions period as a result of this delay if the completion is delayed or will be delayed in accordance with paragraph (8-4) ; and

b) Any such cost with a reasonable profit margin to be added to the contract value. And the engineer shall also, after receipt of such other notice and based on paragraph (3-5), agree on such matters or make estimates in respect thereof.

But if the contractor delayed in issuing the instructions as a result of an error or delay due to an act of the contractor including any error or delay in issuing contractor's documents, then in such case, the contractor shall not be entitled to any extension in the completion period or any compensation for any cost or profit.

#### **1-10 Employers' use of contractor's documents:**

In the relationship between the two parties, the contractor reserves the right to copyright and intellectual property rights with respect to "contractor's documents" and designs that he prepared (or has been prepared in his favor). And the contractor is considered, once signed the contract agreement, that he gives the employer complete undiminished right to reproduce or use or circulate the contractor's documents, including making amendments on them, and this right:

- a) Shall be considered applied during the actual or intended lifetime for the operation of parts of the relevant works, whichever is longer.
- b) Shall authorize any person which the ownership of that part of the works devolves to the right to reproduce, use and handle contractor's documents until the completion, operation, maintenance, modification, repair and demolition of works; and
- c) Allow the use of contractor's documents of computer nature and their software, by any computer in any location or places determined by the contract, including the replacement of any computer hardware provided by the contractor.

The employer (or his representative) shall not allow any third party to use or reproduces or handle contractor's documents and other design documents prepared by him (or have been prepared in his favor) without the contractor approval, for purposes other than those permitted under this "article".

#### **1-11 Contractors' use of employer's documents:**

In the relationship between the two parties, the employer reserves the right to copyright and other intellectual property rights for each of the specifications, drawings and other documents prepared by the employer (or have been prepared in his favor). The Contractor may, at his own expense, use or reproduces or handle these documents for the purposes of the contract. Unless there is a necessity required by the contract, the contractor

shall not allow any third party to use or reproduced or handle such documents, except as may be necessary for the purposes of the contract.

#### **1-12 Confidential Details :**

Contractor's and employer's representatives shall disclose all confidential information and others reasonably to ensure the implementation of the contract in accordance with its provisions. And each of them shall also have to deal with the details of the contract in a private and confidential manner only to the extent necessary to achieve their respective obligations under the contract or applicable laws and neither of them shall be allowed to publish or disclose any works prepared by the other party without his approval. But the contractor shall be allowed to disclose any information published publically or any other information that is required to prove his eligibility to compete in other projects.

#### **1-13 Compliance with Law :**

Contractor shall, in the course of contract implementation, comply with applicable laws, and unless otherwise provided in the special conditions:

- a) The employer shall have obtained (or will obtain) the necessary permits on planning instruction or regulation or licensing related to the permanent works, and any other licenses have been set out in the specification and the employer shall, in this context, protect the contractor against any damage as a result of the failure of the employer in doing so.
- b) The Contractor shall send notices, pay duties and taxes and obtain permits and approvals required by applicable laws regarding the implementation and completion of works and repair any defects therein. And the contractor shall bear any damages that may affect the employer as a result of the contractor's failure to do so, unless the contractor was prevented from achieving that and provided evidence on his pursues to obtain those permits.

#### **1-14 Joint and individual responsibilities:**

If the contractor forms (under the applicable laws) a joint venture or a consortium (coalition) or any grouping of two or more persons in a form differs from the company, then he shall consider the following:

- a) Such persons shall be deemed jointly responsible and individually before the employer for the implementation of the contract.
- b) He shall inform the employer of the name of leader of the joint venture so he shall have the contractor's powers and the management of such personnel.
- c) The contractor shall not change the composition of the consortium (coalition) or its legal entity without the prior approval of the employer.

#### **1-15 inspection and Audit by the Employer:**

The Contractor shall allow the employer and / or his designee to carry out checks on the site and his accounts and records relating to the implementation of that contract, in the contracts resulting from the contracting procedures in which the direct call method or the one tender method was adopted, and to allow auditing such accounts and records by auditors appointed by the owner if required.

Contractor shall, in general and for all contracts, consider paragraph (15-6) (Corruption and fraud practices), which states on the employer's right to carry out checks and audits on contractor's accounts and records in the event of his involvement in any corruption and fraud cases prohibited and its consequences resulting in the termination of the contract and consider the contractor ineligible under **the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it**



## Article Two: The Employer

### 2-1 The right to access the site :

The employer shall give the contractor right to enter to all parts of the site, and enable him **to execute the works**, at the time (or times) specified in the contract data, but the right to enter and possession shall not be exclusive to the contractor alone.

If stated in the contract that the employer shall give the contractor the right **to access and enablement** of any foundations or construction or mechanical supplies or access road, then the employer shall do so on the dates and in the manner specified in the specification, but the employer may withhold the right to **access and enablement** until he receives the performance guarantee.

If a date for the delivery of the site has not been specified in the tender attachment, the employer shall give the contractor the right to enter the site and its **enablement** within the timings which enable the contractor to commence the implementation of the works and proceed according to the work program referred in paragraph (8-3).

If the Contractor incurs a delay and / or cost as a result of employer's failure to enable him to access the site or its **enablement** during that time, the contractor shall give notice to the engineer to assess the contractor's entitlements in this regard, taking into account the provisions of paragraph (20-1) to decide:

- a) Any extension of the completion period due to such delay, if the completion had been delayed or will be delayed, under the provisions of Article (8-4); and
- b) Any cost with a profit margin, to be added to the amount of the contract.

And the engineer shall, after the receipt of this notice, prepare estimates resulting of this under paragraph (5-3), whether by agreement or by carrying estimation in respect thereof.

However, if the employer delayed (and to the extent to which this delay) is due to an error or delay by the Contractor, including any error or delay in the submission of "contractor's document," then in such a case the contractor shall not be entitled to any extension or compensation for any cost or profit.

### 2-2 Permits, licenses, or approvals:

The employer provides reasonable assistance to the contractor (upon his request) to obtain the following:

- a) Copies of the laws of the country related to the contract, which are not available normally ; and
- b) Permits or licenses or approvals required under the laws of the country:
  - 1- In relation to the requirements of paragraph (1-13) - compliance with laws;
  - 2- To supply implementation requirements, including customs clearance;
  - 3- To export contractor's equipment when removed from the site.

### 2-3 Employer's Personnel:

The employer shall be responsible for his personnel and other contractor's personnel working with him in the site to ensure:

- a) The cooperation with the contractor in his efforts according to the provisions of paragraph (4-6).
- b) The obligations to provide safety procedures as are required from the contractor under items (a, b, c) of Article (4-8), and the environmental protection procedures under paragraph (4-18).

### 2-4 Financial arrangements of the employer :

The employer shall provide the evidence required and in a period preceding the date of commencement in (28) days that prove he has secured the necessary financial arrangements of the contract which enable him to repay any demand of the contractor on an urgent basis and in accordance with the provisions of "Article Fourteen" (Cost of the contract and Payments) and the employer shall give notice to the contractor of any changes he makes to such financial arrangements in detail.

## **2-5 Employer's Claims:**

If the employer considers that he has the right to receive an installment, under any of such conditions, or for other contract-related reasons and / or any extension of maintenance period, and then he or the engineer shall, give notice to the contractor of this and provides him with details. However, he is not required to send any notifications relating to the amounts owed to him concerning water, electricity and gas consumption under paragraph (4-19), or for equipment and materials provided by the employer pursuant to article (4-20), or for any other services required by the Contractor. The notice shall be sent as soon as practicable and not later than 28 days from the date on which the employer was aware of the incident or the circumstances that led to the emergence of such claims, As for notice of extension of the "maintenance period", it shall be issued prior to its expiry.

These details should refer to the "article and paragraph" in the contract or other grounds of claims, and include employer's proof-of-claim of such amounts and / or periods of extension that he considers that he is entitled to under the contract. And the engineer shall, in such a case, examine such demands under the provisions of Article (3-5) of the agreement or prepare estimates for the following:

- 1- Any amounts (if any) the employer is entitled to obtain it from the contractor; and
- 2- Any extension (if any) of the period notice of defects repair, in accordance with paragraph (11-3).

These amounts can be included as a deduction in the contract amount and payment certificates. And the employer is entitled to put a seizure or make a deduction only for the quantities approved in the advance payment, or otherwise make a claim under this paragraph.

## Article Three: The Engineer

### 3-1 Duties and Authority of the Engineer:

The employer shall appoint the "engineer" to carry out the duties specified for him in the contract. The engineer's personnel shall be engineers and professionals who have proper sufficiency and qualified to perform such duties.

And the engineer shall not have authority to amend the provisions of the contract. Engineer may exercise the powers conferred upon him specifically in the contract, or those understood by implication in the contract by necessity. If the engineer was required to obtain employer's consent before exercising his authority, then such requirements should be stipulated in the special conditions. The employer shall inform the contractor immediately of any changes he made on the powers granted to the engineer.

In any case, when the engineer exercises his powers, which require employer's approval, it is for the purposes of this contract they shall be deemed as approved by the employer. Except as otherwise stipulated in these conditions:

- a) When the engineer performs his duties or exercises his powers, whether explicitly incorporated in the contract, or understood by implication, he conducts them on behalf of the employer.
- b) The engineer shall have no authority to exempt any of the parties from any of the duties or obligations or responsibilities specified in the contract.
- c) Any authentication or audit or certificate or approval or check or inspection or issuance of any instructions or notification, or suggestion, or request for testing or any other similar act of the engineer (including negligence to issue disapproval) shall not exempt the contractor from any liability incurred under contract provisions, including responsibility for errors or omissions or discrepancies or cases of non-compliance with the conditions.
- d) Any action of the engineer in response to the request of the contractor shall be in writing and within (28) days from the date of application, unless otherwise provided explicitly and the controls listed later shall be relied on.

The engineer shall obtain the employer's approval specifically before taking any actions in terms of any of the cases listed in the paragraphs below:

- a. Approval on adding a period and / or increasing a cost under paragraph (4-12) ; and
- b. Instruct to carry out a change under paragraph (13-1) except in the following cases:
  - 1- Emergency cases as determined by the engineer; and
  - 2- If the change will lead to the increase of the exact contract cost in a percentage less than what is specified in **contract data**.
- c. Approve a change proposal by the contractor pursuant to paragraph (13-3) and change orders proposed by the contractor under paragraphs (13-1) or (13-2) ; and
- d. Determine the amounts due for payment under any of the approved currencies pursuant to the provisions of paragraph (13-4), without neglecting the specified aforesaid obligations on the need for the engineer to obtain employer's prior approval to implement the work and If in the opinion of the engineer that there is an emergency situation related to the safety of personnel, works and surrounding property then the engineer is entitled, without exempting the contractor of any of his obligations and duties under the contract, to instruct the contractor to implement any of the works or the necessary measures to ensure the avoidance or the reduce of the risk arising from such emergency situation, the Contractor shall respond promptly to implement that directive issued by the engineer despite not obtaining the prior approval of the employer in respect thereto and the engineer shall determine the value of the amount to be added to the contract for the implementation of such additional work pursuant to the provisions of article thirteen and to notify each of the contractor and the employer in writing.

### **3-2 Delegation of Authority by the Engineer:**

Engineer - from time to time - may assign to any of his assistants to carry out any of the duties or to authorize him any of the powers conferred upon him, and he may also cancel such delegation or authorization. And these assistants include resident engineer and / or any independent inspectors appointed to inspect all mechanical supplies or materials or testing them. Such appointment or delegation or cancellation shall be in writing, and such a measure shall not be considered effect only after both parties receive notices thereon. But the engineer shall not be entitled to authorize his powers to prepare estimates pursuant to paragraph (3-5), unless the parties agreed to such authorization.

It is required of those assistants to be of proper efficiency and qualified to perform their duties and carry out the authority entrusted to them, and be of experienced in using the language of communication specified in paragraph (1-4) of the contract.

Each of the engineer's assistants who were assigned to carry out duties or authorized a power shall issue instructions to the contractor, and act within the authority limits specified to them in the authorization. Any authentication or audit or certification or approval or test or inspection or the issuance of instructions or notice or suggestion or request or examination or perform any similar procedure done by any of them - within the limits of its authorization – shall be considered as if it were issued by the engineer, and notwithstanding the foregoing:

- a) Any failure on the part of the assistant engineer to reject any work or mechanical supplies or materials shall not mean approving it, and therefore nothing shall prevent the exercise of the engineer of his right to reject the works or mechanical supplies or materials.
- b) If the contractor object to any estimates or instructions issued by the assistant engineer, it is permissible for the contractor to refer the matter to the Engineer, which he shall, without delay, either confirms or reject or modify its content.

### **3-3 Engineer's Instructions:**

The engineer shall issue to the contractor at any time, additional or amended instructions and drawings if they are necessary for the implementation of works or repair any defects therein, pursuant to the provisions of the contract.

Contractor shall not receive instruction only from the engineer, or from any of his assistants authorized duly under the provisions of this "article." However, if any of these instructions constitutes a change [Change Order], then the provisions of "Article Thirteen" shall apply.

The Contractor shall comply with the instructions issued to him by the engineer or his authorized assistant on any matter relating to the contract. And whenever practicable, the instructions shall be issued in writing, but if the engineer or his authorized assistant:

- a) Issued a verbal order;
- b) And received a written confirmation from the contractor (or his representative) regarding the verbal order within two business days from the date of its issuance; and
- c) And he did not respond in writing by rejection and / or issue instruction thereon within two business days from the date of his receipt of contractor's notification.

Then contractor's confirmation for such verbal order shall be deemed as if it were a written order issued by the engineer or his authorized assistant, as the case may be.

### **3-4 Replacement of Engineer:**

If the employer intends to replace the engineer, he shall give notice to the contractor within a period of not less than (21) day from the date of replacement, and he shall specify in his notice the name, address, details and experience of the alternative engineer. If the contractor is not convinced of the nominated alternative engineer, he shall have the right to object by providing notice to the employer, supported by the reasons and the employer shall take the appropriate decision in respect thereof.

### **3-5 Estimations:**

Where these conditions require the engineer to carry out the work of this "article" for the purposes of agreement or to prepare estimates for any matter, the engineer shall consult with both parties in a serious effort to reach an agreement. If no agreement is reached, the engineer shall prepare an estimate in an equitable manner under the provisions of the contract, taking into account all relevant circumstances.

Then the engineer shall notify both parties on any agreement or estimates reached, with supporting details within (28) day from receiving the objection or the request, unless stated otherwise. And both parties shall adhere to the agreement or estimates contained in the notice, unless it is (or will be) re-considered, under the provisions of "Article Twenty" (Claims, Disputes, Arbitration).

## Article Four: The Contractor

### 4-1 General Obligations of the Contractor:

The Contractor shall design (to the extent stipulated in the contract), implement and complete the works under the provisions of the contract and according to the instructions of the engineer and to repair any defects therein.

The Contractor shall provide mechanical supplies and "contractor's documents" specified in the contract, and all his implementation staff, and implementation requirements and consumables and other things and services, whether they are of a temporary or permanent nature, which is required of him to perform the tasks of design, implementation and completion of works and repair any defects therein. And that the equipment, materials and services involved in the core of the works or it required shall be from origins of the eligible countries identified by the employer.

Contractor shall be responsible for the efficiency, stability and safety of all site operations and for all methods of construction, and unless otherwise stated in the contract, the contractor:

- 1) He shall be responsible for all "contractor's documents", temporary works and the design of any the mechanical supplies' items and paragraphs as required so this clause shall be consistent with the contract's requirement; and
- 2) Otherwise, the contractor is not responsible for the design and specification of the permanent works.

The Contractor shall - whenever requested by the engineer – provide the engineer with details of arrangements and methods of implementation of the works that the contractor proposed to be followed for the implementation of the works. The contractor shall not make fundamental change on these arrangements or methods without prior notice of his procedures to the engineer, and then and unless specified otherwise in the special conditions:

- a) The contractor shall provide the engineer with "contractor's documents" for that part of the works according to the procedures stipulated in the contract;
- b) it is conditioned that the "contractor's documents" be consistent with the specifications and drawings, and shall be drafted in the language of communications specified in paragraph (1-4) and include the additional information as required by the engineer to be added to the drawings in order to coordinate between parties;
- c) Contractor shall be responsible for this part of the works, and that this part, after its implementation and the completion of the works and achieving the purpose for which it was set up for it, be carried out as required in the contract; and
- d) The Contractor shall provide the engineer - prior to commencing with the testing upon completion – drawings of the facility (or that part of it) "as been implemented (as- built)," and if required the maintenance and operation guide (manual) required under the specifications, and in detail, so the employer be able to carry out maintenance, operation, dismantle, installation, calibration and repair processes on it, and this part of the works, shall not be considered it has been completed for the purpose of receiving it under paragraph (1-10) only after the submission of these documents and the operating guide (manual) to the engineer.

### 4-2 Good Performance Guarantee:

The Contractor shall provide (at his own expense) **good** performance guarantee till the proper implementation of the works, in the amount and currency specified in the **contract data**, and if the amount is not been determined in the **contract data**, the provisions of this "paragraph" shall not apply. The contractor shall provide (at his own expense) **good** performance guarantee to the employer within (28) day from his receipt the "Letter of Award" and he shall sent a copy thereof to the engineer. The guarantee shall be issued by a bank or a financial institution approved by the employer, and shall be prepared according to the form attached to the special conditions, or in another form approved by the employer. The contractor shall ensure that the performance guarantee remains valid till the contractor implements and completes the works and repair any defects therein. But if the guarantee conditions contain the date of its expiry, and it found that the contractor will not be authorized to receive the " final acceptance certificate of the works " on a date precedes the deadline for the validity of the

good performance guarantee by (28) days, he shall extend of the guarantee until the completion of the works and repair any defects therein.

The employer shall not have to submit a claim in connection with the good performance guarantee only in regard of the amounts due to him under the contract. And the employer shall compensate and protect the contractor from all damages, losses and expenses (including litigation's fees and expenses), which may result from the employer claims concerning the guarantee, to the extent to which the employer is considered not rightful in his claim. The employer shall return the good performance guarantee to the contractor within (28) day from the date of his receipt of the final acceptance certificate of the works.

In addition to the conditions set forth in this paragraph, whenever the engineer determined the need to increase or decrease the contract amount as a result of changes in prices or legislation or as a result of change orders by more than 25% for any amount of the contract in a particular currency then the contractor, at the request of the engineer, shall take immediate measures to increase or decrease the amount of the good performance guarantee depending on the situation requirements in that currency by equal percentage.

#### **4-3 Contractor's Representative:**

The Contractor shall appoint "contractor's representative," and shall give him full power necessary to act on his behalf under the requirements of the contract. And if no contractor's representative has been named in the contract, the contractor shall – before the commencement date – provide the engineer for approval, the name and qualifications of the person proposed by the contractor to be his representative. And If he has not been approved or the approval is withheld later by the engineer based on paragraph (6-9) (contractor's representatives), or if the representative failed in exercising his work as a contractor's representative, the contractor shall provide in the same manner the name and qualifications of another person to be appropriate for such appointment.

The Contractor shall not be entitled to cancel the use of his representative or to replace him, without obtaining the prior approval of the engineer on this action. Contractor's representative shall work on a full-time basis to manage the implementation of the contractor's works, if circumstances warrant such a representative to be absent temporarily from the site during the implementation of the works, then the contractor shall designate a suitable alternative with the prior approval of the engineer, and the engineer shall be notified thereof.

The contractor's representative shall receive instructions on behalf of the contractor, pursuant to paragraph (3-3), and contractor's representative may delegate some of his powers or duties or authorities to any qualified person, and to cancel such delegation in any time later on. But such delegation or cancelation shall not be deemed valid only if approved

by the engineer, after receiving a prior notice signed by the contractor's representative contains the name of that authorized person and his qualifications and the power or the tasks or the authority he was delegated or the one that has been cancelled.

The contractor's representative and all these people shall be well-versed using the language of communication specified under paragraph (1-4). Otherwise, the Contractor shall secure translators with experience on an ongoing basis within working hours and with the number required of the engineer.

#### **4-4 Subcontractors:**

The contractor shall not assign the entire works to subcontractors but he may assign part of the works to them after obtaining the written approval of the engineer. And the contractor shall be responsible for the actions and errors of any subcontractor or his agent or his employees, as if such acts or errors carried out by the contractor himself, and unless otherwise provided in the special conditions:

- a) The contractor shall not be required to obtain approval regarding the suppliers of material or on any subcontract where the subcontractor name is mentioned specifically in the contract.
- b) The contractor shall obtain the prior approval of the engineer on other subcontractors.
- c) The contractor shall send notice to the engineer in a period of no less than (28) day of the target date for the commencement of the work of any subcontractor, and the actual commencement of such work at the site; and
- d) It is conditioned in each subcontracting to have texts authorize the employer to be waived for this subcontracting to him, under paragraph (4-5) (when need to be applied), or in case of contract termination by employer under paragraph (15-2).

The contractor shall undertake to cause his subcontractors to adhere to the same conditions that he adheres to in paragraph (1-12) in relation to confidentiality. The foreign contractor shall provide equal opportunity to local contractors to work as subcontractors in the implementation of the works assigned to him.

#### **4-5 Waiver the Subcontracting:**

In case of subcontractor's obligations continue until after the expiration of the "maintenance period", and engineer's request to the contractor (before such date) to waive this subcontracting to the employer, the contractor shall do so. In such case, the contractor shall not be responsible to the employer for any action conducted by the subcontractor after the waiver process becomes valid, unless stipulated otherwise in the waiver's letter.

#### **4-6 Cooperation:**

The Contractor shall, as stipulated in the contract or in response to engineer's instructions, provide the proper facilities to carry out any acts of:

- a) Employer's personnel
- b) Any other contractors used by the employer
- c) Employees of any other public authorities legally formed.
- d) Those who are used to implement work on or near the site, of works other than what is covered in the contract.

Such instructions will be considered changes to the extent in which the contractor is exposed to a delay on his work and / or bear unforeseen costs. Such services required by those employees or other contractors may include the use of contractor equipment, temporary works and arrangements for access to the site, which is considered the responsibility of the contractor.



If it is required from the employer under the contract to give the contractor possession of any foundation or construction or mechanical supplies or access right under the "contractor's documents", the contractor shall provide the engineer with such documents at the time and in the manner specified in the specifications.

#### **4-7 Setting up the dimensions:**

The contractor shall set up works regarding cardinal points and alignments (Linearity) and reference levels that are described in the contract or those that provide to him by the engineer. Contractor is also responsible for the installation accuracy of all parts of works, and it has to repair any error in the places or levels or measures or alignments of the works.

The employer shall be responsible for any errors in identifying those reference points stipulated in the contract, or those provided by the contractor, but the contractor shall do his utmost to investigate its accuracy before use.

If the Contractor incurred delays in the implementation of works and / or in the cost due to the implementation of works based on false information in reference points, which an expert contractor could not discover such errors reasonably and avoid the delay and / or increased costs arising from them, the contractor shall send a notice to the engineer to assess its requirements in this regard, taking into account the provisions of paragraph (20-1) and as follows:

- a) Any extension to the completion period due to this delay, if the completion has been delayed or will be delayed under paragraph (8-4).
- b) Any such cost with a profit margin, to be added to the contract amount.

When receiving such notice, the engineer shall and pursuant to paragraph (3-5), approve it or prepare the necessary estimates for the following:

- a) If detecting the error was impossible reasonably, and to what extent ; and
- b) The two matters mentioned in paragraphs (a, b) above, but within this extent.

#### **4-8 Safety Procedures:**

The contractor shall:

- a) Adhere to all safety instructions required to be applied;
- b) Care for the safety of all persons entitled to be present on-site;
- c) Make reasonable efforts to maintain site and works free of unnecessary barriers, with a view to protect these people from exposing to risk;
- d) Provide fences, lights, guards and works monitoring until the completion and delivery of work under the provisions of "Article Ten";
- e) The provision of any temporary works (including roads, pathways, guards and fences) as required, due to the implementation of the works, to use and protect the audience, owners and users of the users of the land adjacent to the site.

#### **4-9 Quality Assurance:**

The Contractor shall develop a quality assurance system to prove his adherence to the contract's requirements, provided that the system be compatible with the contract's details, and the engineer is also entitled to audit any of the manifestations of this system.

Details of all conforming procedures and documents shall be provide to the engineer - to inform him - before starting in any of the design and implementation phases, and when

issuing any document of a technical nature to the engineer, it should appear on this document what proves the prior approval of the contractor himself on them. Adherence to the quality assurance system shall not exempt the contractor from any of his duties or obligations or responsibilities mentioned in the contract.

#### **4-10 Site Data:**

The employer shall put u at the disposal of the contractor to brief him, and prior to the "Basic Date" what he has of data related to the subsurface and hydrological conditions at the site, including environmental phenomena.

And also he shall be put at the disposal of the Contractor any information obtained after the Basic Date, but that the contractor shall be responsible for his interpretation of all such information.

And also, and to the extent practically possible (taking into account the two factors time and cost), the contractor is considered that he has obtained the necessary information related to the risks and contingency prospects and other conditions that may affect his proposal or the works. And to the same extent, the contractor is considered that he has inspected and examined the site and the adjacent area, and he had become familiar with all the aforementioned information, and that he personally is satisfied, before submitting the tender offer, with all things related, and including but not limited to the following:

- a) Form and nature of the site, including the conditions of the subsurface ;
- b) Hydrological and climatic conditions;
- c) The amount and nature of work and the implementation requirements necessary for the implementation and completion of works and repair any defects therein;
- d) Laws and procedures of the country, and work practice therein;
- e) Contractor's requirements with respect to site access, accommodation, utilities, personnel, power, transportation, water, and other services.

#### **4-11 Sufficiency of the accepted contract amount**

It is assumed that the contractor:

- a) Is satisfied with the accuracy and adequacy of the "contract amount approved";
- b) Has prepared his tender offer based on the information, interpretation, data, detections and tests necessary and his conviction of all matters referred to in article (4-10). And except as may be otherwise stated in the contract, the "contract value approved" shall cover all contractor's obligations required in the contract (including reserve amounts - if any) and all things necessary for the design, implementation and proper completion of works and repair any defects therein.

#### **4-12 Unforeseen material condition (obstacles beyond the control of the contractor)**

The term "material conditions": shall mean the physical natural conditions and artificial barriers and other natural obstacles and contaminants that the contractor may face in the site when performing works, including the subsurface and hydrological conditions, but it does not include climatic conditions.

If the contractor faced adverse physical conditions, which is considered unforeseen, he shall notify the engineer in a period not exceeding 28 days under paragraph (20-1), provided that the notice shall include a description of the condition and statement of the reasons that led him to consider it as such so the engineer can preview and verify the reasons attributed by the contractor to being unforeseen.

The Contractor shall continue to implement the works, taking reasonable and appropriate precautions against these "material conditions" and comply with any instructions may be issued by the engineer in this regard, but if any of these instructions form a change [change order], then the provisions of Article (Thirteen ) shall apply in respect thereof.

If the contractor faced such unforeseen material conditions, and to the extent they can be considered as such, and he sent a notice thereon to the engineer, and incur delays in completion period and / or cost because of them, he shall be entitled, taking into account the provisions of paragraph (20-1), to the following:

- a) Extension of completion period due to this delay, if the completion has been delayed or will be delayed, under the provisions of article (8-4);
- b) Any such cost to be added to the contract amount.

The engineer shall, after receiving the aforementioned notice, check and / or investigate the "material conditions" and then agreed upon pursuant to paragraph (3-5) or prepared the estimates as follows:

- 1) Whether the "material conditions" are unforeseen, and to what extent can be considered as such; and
- 2) Assess the two matters in items (a, b) above, given to that extent but however, the engineer may, prior to agreement on financial compensation or its estimations as mentioned in paragraph (2) above, investigate whether the other material conditions in similar parts of the works (if any) is better than perspective (reasonably) when submitting the tender offer by the contractor, and if such favorable conditions has been encountered, the engineer may follow the method of paragraph (3-5) to estimate or reach by agreement to cost reduction due to these conditions, which can be considered discounts from the contract amount and payment certificates.

And the engineer shall view any proof provided by the contractor for these material conditions, as was expected by the contractor when submitting tender offer, but the engineer is not obliged to adopt the interpretation contained in such a proof.

#### **4-13 Right of passage and Facilities:**

Unless otherwise stipulated in the contract, employer shall secure (and without any cost on the contractor) access road and possession of the site, including special or temporary access right, which is considered necessary for the work, and the contractor shall secure on his own responsibility and expense any additional facilities outside the site, which may be required for the implementation of the works.

#### **4-14 Avoid interference:**

The Contractor shall not interfere unnecessarily or, inappropriately, in the following:

- a) Convenience of the public ; and
- b) Access to, use of and occupy all roads and pathways, whether public or private owned by the employer or other people;

The contractor shall compensate the employer and protect him from damage, losses and expenses (including litigation's fees and expenses) for everything that results from any unnecessary or inappropriate interference or obstruction.

#### **4-15 Access roads:**

The contractor is deemed that he has investigated the availability and suitability of access roads to the site, and that he is convinced of their conditions. The contractor shall make reasonable efforts to avoid damage to roads or bridges and protect them from damage as a result of the traffic movement of the contractor or his employees, including the use of appropriate vehicles and roads.

Except as otherwise provided in these conditions:

- a) The contractor shall be responsible (between the parties) for any maintenance that may be required for access roads due to his use of them;
- b) The contractor shall provide necessary signals and guidelines along these roads.

And acquire the required permits from the relevant authorities regarding the use of roads, signals and directions;

- c) The employer shall not be responsible for any claims that may arise from the use or otherwise of any access road;
- d) The employer shall not guarantee the suitability or availability of access roads;
- e) The contractor shall bear the cost incurred due to the lack of or adequacy of these access roads.

#### **4-16 Transportation of execution requirement:**

Unless otherwise stated in the special conditions:

- a) The Contractor shall notify the engineer in a period not exceeding (21) days from the date of the arrival of any mechanical supplies or a major piece of the other implementation requirements to the site ;
- b) The contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all supplies and other items necessary for the works ;
- c) The contractor shall compensate the employer and protect him from any damages, losses or expense (including litigation's fees and expenses) that may result from any damage occurs as a result of the transport of implementation requirements, and he shall negotiate and pay claims that may result from the transport process ;

#### **4-17 Contractor's Equipment:**

The contractor shall be responsible for all his equipment. The contractor equipment, after been brought to the site, shall be deemed dedicated exclusively for the implementation of the works. The contractor shall not be entitled remove from site any major parts of equipment without the approval of the engineer, but such approval is not required in connection with vehicles used for the transfer of implementation requirements or contractor's personnel.

#### **4-18 Environment protection:**

The contractor shall take all reasonable steps to protect the environment (inside and outside the site), and to limits the creation of inconvenience or damage to individuals and property as a result of pollution or noise or otherwise, which could result from the implementation processes. And the contractor shall also ensure that the percentage of emissions and the amount of swage and their flow resulted from his activity do not exceed the amounts allowed in the specifications or the amounts specified in the applicable laws.

#### **4-19 Electricity, Water and Gas:**

The contractor shall be responsible for providing power, water and other services that he may need it, except what is provided for later, for the purposes of implementing the constructions and for the extent required in the specifications for testing purposes.

The contractor has the right to use electricity, water, gas and other services available at the site for the purpose of implementation of the works, according to the details and for the prices set forth in the specification, the contractor shall provide on his responsibility and expense any tools required for such uses and for measuring the quantities he consumes.

Agreement shall be made on the amounts of the consumed quantities and their prices (under the specified prices) for such services, or shall be estimated pursuant to paragraph (2-5) to calculate the employer's claims, and paragraph (3-5) to make estimates, and the contractor shall pay these amounts to the employer.

#### **4-20 Equipment and materials provided by the employer:**

The employer shall allow the contractor to use "employer's equipment" - if any - in the implementation of the works according to the details and arrangements for the prices specified in the specification, and unless otherwise provided in the specification:

- a) The employer shall be responsible for his equipment, with the exception of the following;
- b) Contractor shall be responsible for any piece of "employer's equipment" while contractor's personnel operate or drive or possess or control it.

Amounts and usage allowances shall be determined "according to the specified prices" for the use of employer's equipment by agreement or by engineer's estimates in accordance with the provisions of paragraphs (2-5, 3-5) and the Contractor shall pay these amounts to the employer.

The employer shall provide the contractor - at no charge - the materials he is obliged to provide for free (if any) in accordance with the details specified in the employer's requirements. The employer shall, on his responsibility and expense, provide these materials at the time and place specified in the contract, where the contractor shall check them visibly, and inform the engineer immediately for any shortage or defect or insufficiency therein. And unless agreed between the parties otherwise, the employer shall immediately correct any shortage or defect or insufficiency therein.

After such visible check, these free of charge materials shall become in the custody of the contractor and under his protection and control, but contractor's obligation to check and protect it shall not relieve the employer from the responsibility for any shortage or defect or insufficiency unless it cannot be detected through the visible check.

#### **4-21 Work Progress Reports:**

Unless otherwise provided in the special conditions, the contractor shall prepare monthly work progress reports and pass them to the engineer in (6) copies, provided that the first report shall cover the period until the end of the month following the date of commencement, and then the reports shall be issued monthly, within (7) days from the last day of the period in respect thereof.

Reporting shall continue till the contractor performs all the remaining works and shortages until the completion date specified in the initial acceptance certificate of the works. Each report shall contain the following:

- a) Diagrams and details of work progress including each stage of the design, contractor's documents, purchase orders, manufacturing, delivery to the site and the construction, installation, testing and include all work stages performed by the named subcontractor as defined in accordance with Article Five (subcontractors who has been named) ;
- b) Photographs showing the conditions of manufacturing and work progress at the site ;
- c) With regard to the manufacture of the major items of mechanical supplies and material: list the names of manufacturers and manufacturing locations and the percentage of progress and the expected and actual dates of completions:
  - 1) For commencement of the manufacture process;
  - 2) For inspection operations by the contractor;
  - 3) For tests ; and
  - 4) For shipment and delivery to the site.
- d) Contractor implementation staff and his construction equipment data as described in paragraph (6-10) ;
- e) Copies of documents of quality assurance, results of tests and certificates of materials ;

- f) List of notifications of change orders related to employer's claims according to paragraph (5-2) and contractor's claims according to paragraph (20-1) ;
- g) Public safety statistics, inclusive of details relating to any dangerous incidents and any activities related to environmental aspects and public relations;
- h) Comparison between the actual progress and the planned progress of implementation of the works, with details of the facts or circumstances that might hinder the completion according to the contract, a statement of the actions being taken (or to be taken) to avoid delays.

#### **4-22 Security at Site:**

Unless specified otherwise in the special conditions:

- a) The contractor shall be responsible for not allowing unauthorized persons to enter the site; and
- b) The presence of authorized personnel at the site shall be restricted to contractor's personnel and employer's members and any other persons whom a notice is given in this regard to the contractor from the employer or engineer as persons authorized by the other contractors of the employer at the site.

#### **4-23 Contractor's operations at the site:**

The contractor shall restrict his operations to the site and any other areas that the contractor may obtain and approved by the engineer to be considered as work arenas (yards). And he shall also take all necessary precautions to keep contractor's equipment and his personnel within the boundaries of the site and these arenas (yards), so as to prevent trespassing on adjacent land.

The contractor shall, during the implementation of works, maintain the site free of all unnecessary obstacles, store or take out surplus equipment for after coordination with the engineer and cleans up the site of all debris, waste and temporary works no longer needed.

The contractor shall, upon the issuance of the initial acceptance certificate of the works, clean up all parts of the site or the works related to such certificate, and to remove the surplus equipment and materials located in the site, as well as waste, debris and temporary works, so as to leave such parts of the site and works clean and in a safe condition. But the contractor may maintain on the site until the end of the "maintenance period" what he need of implementation requirements up to the fulfillment of his obligations under the contract.

#### **4-24 Antiquities:**

All fossils or money or findings of value or antiques or installations and other remains or material of geological or archaeological value which are found at the site shall be placed under the care and disposal of the employer. The contractor shall take all reasonable precautions to prevent his personnel or any other persons from removing or damaging any of these findings. And the contractor shall, at his discovery of such assets, give notice forthwith to the engineer of their existence, and the engineer shall give his instructions on how to deal with them.

If the Contractor incurred a delay in the implementation period and / or cost as a result of compliance with such instructions, he shall send another notice to the engineer to assess his entitlements, taking into account the provisions of paragraph (20-1) with respect to the following:

- a) Extension of completions period due to this delay, if the completion delayed or will be delayed, under paragraph (8-4); and
- b) Any such cost, to be added to the contract amount.

And the engineer shall act after receiving this other notification, in accordance with paragraph (3-5) to agree on, or conduct estimates for these matters.

## **Article Five: Nominated Subcontractors**

### **5-1 Definition of the nominated Subcontractor:**

The nominated subcontractor in this contract shall mean any subcontractor:

- a) If stipulated in the contract that he is a nominated subcontractor; and
- b) Who the engineer, according to the provisions of article "Thirteen" – Changes and Amendments", shall issue instructions to the contractor to use him as a subcontractor under paragraph (5-2) (Objection on the Designation).

### **5-2 Objection to the nomination:**

Except for the nominated subcontractors in the contract, the contractor shall not be obligated to use any other nominated subcontractor which he has a reasonable objection against. Provided that he shall give notification the engineer and stating the supporting details. And the objection shall be considered reasonable if it shows (in addition to other things) any of the following matters, only if the employer also agreed to indemnify the contractor for the results of this matter:

- a) That there are grounds to believe that the subcontractor does not have sufficient training or resources or financial capacity;
- b) That the named subcontractor does not accept the contractor's compensation and his insurance against any failure or misuse of supplies resulting from him or his agents or his personnel; or
- c) That the named subcontractor has refused signing the contracting agreement for sub-works (including the development of designs if any). The named subcontractor shall:
  - 1) The named subcontractor shall bear towards the contractor all obligations and responsibilities that enable the contractor to fulfill his obligations and responsibilities under the contract;
  - 2) Compensates the contractor towards all obligations and responsibilities that may result from the contract or those related to it and as a result of the failure of the subcontractor in the performance of those obligations or fulfill those responsibilities; and
  - 3) No payment of dues referred to in paragraph (3-5) shall be paid to the named subcontractor only after the contractor receives payments from the employer for the works performed under the subcontracting agreement.

### **5-3 Payments to the nominated subcontractors:**

The contractor shall pay the nominated subcontractor all amounts referred to in the approved lists of payments to the subcontractor after approving them by the engineer as a an entitlement to him under the subcontracting agreement, and these amounts plus any other expenses shall be part of the contract price under paragraph (5-13 ).

### **5-4 Proof of payments:**

The engineer may, before issuing any payment certificate contains an amount due to the named subcontractor, request the contractor to provide a reasonable proof that all amounts that are due to the named subcontractor in the previous payment certificates have been paid to him, minus the deductions applied to the withholdings or the others, unless the contractor carried out the following:

- a) Provide this reasonable proof to the engineer ; or b)
  - 1) Convince the engineer in a written proof that the contractor is reasonably right to withhold such amounts or refuse to pay them; and
  - 2) To provide the engineer a reasonable proof that the named subcontractor has been notified of the contractor is right in his procedure.

Then the employer may (at his sole discretion) order payment to the named subcontractor part or all of the amounts that had been approved previously (net of deductions applicable) which entitled to the named subcontractor were and the contractor were unable to provide proofs described in paragraphs (a, b) above in terms thereof. The contractor shall, in such a situation, return to the employer such amounts that are spent directly by the employer to the named subcontractor.



## **Article Six: Employees and Workers**

### **6-1 Appointment of Employees and Workers:**

Unless otherwise stated in employer's documents, the contractor shall take arrangements for the appointment of the necessary employees and workers, local or others, and the payment of their salaries, food and transportation and if appropriate, their accommodation and the contractor shall (to the extent possible and reasonable) appoint experienced and qualified workers and employees from local sources within the country of works.

### **6-2 Wage average and labor conditions:**

The contractor has to pay salary rates and take into account the working conditions so that its level shall not be less of what is followed by the owners of commercial and Industrial profession in the area where the works are being implemented. If no such rates or conditions exist, the contractor shall pay the salary rates and consider the working conditions so it shall not be less than the general level of salaries or conditions that are considered locally by the employers of commercial or industrial professions similar to those carried out by the contractor.

The contractor shall notify his employees of their responsibility for the payment of income tax realized on them in the country of works for their salaries, wages, bonuses and any relief related to such taxes under the laws of the country of works, the contractor shall conduct such tax deductions from his employees income realized under such laws.

### **6-3 Persons employed by the employer (Employees):**

The contractor shall not be allowed to use or attempt to attract the services of any of the personnel (employees) or workers who are working within the members of the employer.

### **6-4 Work Rules:**

The contractor shall comply with all labor laws applicable to its employees, including laws relating to employment, health, public safety care, residence and immigration, and that he shall take into account all their legal rights. The contractor shall also require his employees to obey applicable laws, including safety systems at work.

### **6-5 Working Hours:**

No Implementation of works at the site shall be conducted during local official holidays acknowledged or beyond the regular working hours stated in the **contract data**, unless:

- a) It was stipulated otherwise in the contract ;
- b) It was approved by the engineer ; or
- c) Continuation of work cannot be avoided, or was necessary to save the life of people and properties or to save the safety of the works, and in such case the contractor shall inform the engineer forthwith.

## **6-6 Employees and Workers Facilities:**

Unless stated otherwise in employer's requirements, the contractor shall provide and maintain the necessary facilities and supplies for his employees, and he shall provide the facilities set forth in employer's requirements. The contractor shall not allow any of his employees to use any of the facilities that form part of the permanent works as their permanent or temporary place of residence.

## **6-7 Health and Safety:**

The contractor shall take reasonable measures at all times to maintain the health and safety of his employees, and to provide - in collaboration with local health authorities - what is necessary of medical staff, first aid facilities, and rooms for patients and ambulances, to be ready at all times on the site and in collective housing for contractor's employees and employer's personnel. And he shall also provide appropriate arrangements for public health requirements and to prevent the spread of epidemics.

The contractor shall appoint a person responsible for the safety and the prevention of accidents at the site, so this person shall be of proper qualification to be in charge of safety and accident prevention matters. And he shall be authorized with the power to issue instructions and to take preventive measures necessary to ward off accidents. And in this context, the contractor shall provide the safety officer with all that is needed to enable him to exercise his powers and responsibilities.

The contractor shall also send the engineer details of any incident as soon as it occurs, and he shall maintain records and submit reports related to public health and safety and damage to property as required by the engineer reasonably.

And for the protection of Acquired Immune Deficiency Syndrome (AIDS), the contractor shall implement awareness programs against the Acquired Immune Deficiency Disease through this service providers accredited by taking the necessary measures to guarantee that no transmission and spread of the disease among his employees and to the local citizens and ensure prompt diagnosis and assist people infected.

The Contractor shall, during the contract (including the period of repair of defects):

- 1- Conduct campaigns every two months (minimum) to gather information, spread awareness and provide counseling to the all staff and workers (from contractor's personnel, subcontractors, consultants, truck drivers and site's suppliers), and citizens in the neighboring districts about responsibility, dangers, impacts and practices to be avoided as far as the matter relates to ensure that no transmission infections of the disease-causing and diseases resulting from sexual relations, and in particular of Acquired Immune Deficiency Syndrome (AIDS) ;
- 2- Secure means to maintain the non-transmission of infection during those sexual acts for both sexes ; and
- 3- Carry out periodical survey, diagnosis, treatment definition, and referral to local programs (local health centers) specialized in the treatment of sexually transmitted disease and Acquired Immune Deficiency Syndrome (AIDS) (unless agreed otherwise) and for all contractor personnel and workers working at the site.

The contractor shall include in his program for the implantation of works to be implemented pursuant to the provisions of paragraph (8-3) applicable program for his employees and workers at the site and their families to ensure that no cross-infection occurs, contracting sexual disease, Acquired Immune Deficiency Syndrome (AIDS) and include preventive measures and the costs necessary to do so under this paragraph and specifications and the this program shall also include details of its components and the resources required to be secured and employed and contracting procedures to implement it. The program shall also support the analysis of the speculative cost enhanced by the supporting documents and payment to the contractor shall be made for the preparation and implementation of this program not to exceed the amounts specified for this purpose

### **6-8 Contractor's Control:**

The contractor shall provide all staff necessary for planning, directing, arranging, managing, inspecting and testing of works, throughout the implementation period and beyond for any period required for the contractor to fulfill his obligations.

Control shall be carried out by a sufficient number of qualified persons using communication language (in accordance with the provisions of paragraph (1-4)) and in operations to be implemented (including methods and techniques required and risks may be exposed to and accidents preventing methods), till the implementation of the works satisfactorily and safely.

### **6-9 Contractor's Employees:**

The contractor's employees shall be of adequacy, skill and experience suitable both in his career or his craft and be approved by the engineer, and the engineer may ask the contractor to expel (or to work on expel) any person employed in the site or in the works, including the contractor's representative, if the that person:

- a) Is persisting in his behavior or careless on an ongoing basis;
- b) Carry out his duties in incompetent or neglecting manner;
- c) Fails in applying any of the provisions of the contract;
- d) Is persisting in a behavior that threatens the safety or health or environmental protection.

And in this case, the contractor then shall appoint (or work to appoint) a suitable alternative.

### **6-10 Records contractor's workers and equipments:**

The contractor shall provide the engineer with detailed records to declare what is available at the site of the numbers contractor's personnel classified by skills, and the number of his equipment classified by types. These records shall be provided to the engineer each month, by using the samples approved by the engineer, till the contractor performs any work known that is remained at the completion date specified in the "Acceptance Certificate of the Works".

### **6-11 Undisciplined Behavior:**

The Contractor shall at all-time take all reasonable precautions to prevent any riots or overcome the law or breach of system by contractor's employees or among them, and to maintain the security and protection of persons and property at site and surrounding area.

### **6-12 Foreign workers:**

The Contractor shall be entitled to bring foreign workers from outside the country of works with the necessary numbers for the implementation of works and within the limits allowed under the laws applicable.

The Contractor shall ensure the entry of such labor according to entry visas and legal work approvals, and the employer under a request of the contractor may provide immediate assistance to the contractor to obtain the local, regional and governmental permits to bring in foreign labor needed to the work.

The Contractor shall be responsible for return his employees to the place that they have been hired from or their former place of residence. In case of death of any of them or one of their family members residing with them, the contractor in a similar manner shall be responsible for securing necessary procedures for the repatriation or burial.

**6-13 The Necessary Supplies for Food:**

The Contractor shall prepare the necessary arrangements for the preparation of adequate supplies of proper food as defined in the specification and at affordable prices to his employees involved in the implementation of the contract

**6-14 Water Supplying:**

The contractor shall be familiar with the conditions of the site and secure safe drinking water and for other purposes for the use of his employees.

**6-15 Prevention of harmful and annoying insects:**

The Contractor shall, throughout the contract duration, take the necessary measures to protect his employees working at the site from harmful and annoying insects in order to reduce risks to workers' health. The contractor shall implement the instructions issued by the local health departments when selecting and using pesticides for this purpose.

**6-16 Alcoholic liquor and drugs**

The Contractor shall not import, sell or barter or distribute any of the alcoholic beverages, drugs or allowing the supply, sale or barter or distribute any of by his employees in violation of what is applicable in the laws of country of works in this regard.

**6-17 Weapons and ammunition:**

The Contractor shall not give or barter or distribute any weapons or ammunition of any kind to any person or permit any of his employees to do so.

**6-18 Celebrations and Religious Events:**

The Contractor shall respect the recognized events in the country, rest days and any religious habits or others.

**6-19 Funeral Ceremonies:**

The contractor shall be responsible for taking the required measures under domestic instruction necessary for the funeral ceremonies of any of his local employees, who died during his employment and under applicable local requirements.

**6-20 Use of Force and Threat in the Appointment of Workers:**

The Contractor shall not appoint labor under the use of force and threat of any type, and that any kind of work and performance of service in which voluntary appointment has not been adopted, such appointment shall be deemed made by adopting the use of force and the imposition of sanctions.

**6-21 Prohibition of child labor:**

The Contractor shall not use child labor in any of the works of economic exploitation nature, or that exposes or deprives him of education or that are harmful to his health or body or mind or behavior or psychology or social development.

**6-22 Reports of Workers ' Operation:**

The Contractor shall maintain complete and accurate reports of the rules and regulations of the appointment of the workers at the site and that these reports shall include name, age, sex, working hours and wages paid and for all his workers, these reports shall be summarized monthly, and be ready for the engineer review during normal working hours. These reports shall be provided within the rest of the other details to be submitted by the Contractor to the engineer under paragraph 6-10 (Records of workers and contractor's equipment).

## **Article Seven: Mechanical Supplies, Materials and Workmanship**

### **7-1 Method of Implementation:**

Contractor shall manufacture mechanical supplies, produce and manufacture materials, and all other implementation works as follows:

- a) In the manner specified in the contract (if any);
- b) In a keen manner and befits the principals of a professional and recognized industry; and
- c) By using adequately equipped facilities and non-hazardous materials (unless otherwise provided for in the contract).

### **7-2 Samples:**

The Contractor shall provide the engineer, with the following samples of materials and relevant information, to obtain approval before the use of such materials in the works:

- a) Samples of manufacturers' standard for materials and samples set forth in the contract and at the expense of the contractor; and
- b) Any other additional samples required by the engineer as changes.

Provided that a label shall be put on each sample to indicate the origin and purpose of its use in the works

### **7-3 Inspection:**

The employer's personnel shall have in all reasonable times the following:

1. Easy access to all parts of the site and to all other places from where the natural materials are obtained from; and
2. To be able during production, manufacturing and construction (inside and outside the site), to test, inspect, measure and check the materials and workmanship, and verify the progress of manufacturing of the mechanical supplies and the production and manufacturing of the materials.

The Contractor shall give employer's personnel the full opportunity to carry out these activities, including the provision of right of access and facilities, permits, safety kits, note that the contractor carrying out such acts shall not exempt him from any obligation or liability.

The Contractor shall notify the engineer when works is supplied and before being covered or hidden, or packaged with a view to storage or transport. And then the engineer shall conduct examination, inspection, measurement or testing without any delay, or that the contractor knows that he does not need to make detection of them.

If the contractor failed to notify the engineer, it entails - when requested by the engineer – to disclose the works that have been covered, and then return it to its former position and repair the defects therein and the contractor shall bear all the costs that ensue.

### **7-4 Test:**

What is contained in this "paragraph" shall apply on all tests stipulated in this contract except the tests that are carried out after completion (if any).

Unless otherwise provided for in the contract, the contractor shall provide all tools, supporting materials, documents, other information, electricity, equipment, fuels, consumables, tools, labor, materials, qualified staffs and expertise that is necessary to conduct the tests set forth in an effective manner. And he shall agree with the

engineer on the time and place to hold the test for any of the mechanical supplies, materials and other parts of the works.

The engineer may, pursuant to the provisions of "Section Thirteen" to change the location or the details of the tests prescribed, or to order the contractor to carry out additional testing. And if it is found as a result of these changed or additional tests that the mechanical supplies or materials that have been examined do not conform to contract's requirements, then the cost of implementing these changes shall be borne by the contractor, regardless of the other provisions of the contract.

The engineer shall give notice to the contractor before (24) hours at least informing him of his intention to attend the tests. If the engineer or his designee did not attend at the time and place agreed, the contractor may continue to carry out tests, unless written instructions are issued to him from the engineer otherwise, these tests shall be considered as if it had been conducted in the presence of the engineer.

If the contractor incurred a delay and / or a cost due to his compliance with these instructions, or as a result of the delay which the employer is considered to be responsible for it, the contractor shall give notice to the engineer to assess his requirements in this regard, taking into account the provisions of Article (20-1), regarding:

- a) Extension of completion period due to the delay, if the completion is delayed or will be delayed under the provisions of article (8-4) ; and
- b) Any such cost to be added to the contract amount.

The contractor shall, after receiving such notice, to agree or conduct estimates on these matters under the provisions of paragraph (3-5).

The Contractor shall provide the engineer, without delay, certified tests reports. If the engineer found that the tests have been approved, he shall approve and acknowledge the test certificate, or issued to the contractor a letter to that effect. And the engineer shall, if he has not attended the tests, accept the results of the readings as being correct.

#### **7-5 Rejection:**

If the contractor failed to conduct any tests required under the contract, or if he found that as a result of any test or inspection or measurement that any the mechanical supplies, materials or workmanship are defective, or that it does not comply with contract requirements, the engineer may reject the mechanical supplies or materials or workmanship by sending a notice to the contractor, with a statement of the reasons for the refusal. The contractor shall consequently, repair the defect in the item rejected until it become compatible with the contract requirements. If the engineer requested for any re-test of the mechanical supplies, or materials or workmanship, then the re-conducting of the tests shall be made under the same conditions or circumstances. If as a result for this it found out that the employer has incurred additional costs due to rejection and re-test, the contractor shall, in accordance with paragraph (2-5), pay this additional cost to the employer.

#### **7-6 Repairs Works:**

Despite of any previous test or issuance of a previous certificate, the engineer has the powers to issue instructions to the contractor, with the following:

- a) Remove any mechanical supplies or materials in violation of the requirements of the contract and replace them;
- b) Remove and re-implementation any part of the works in violation of the contract's requirement; and
- c) Implement any work considered in the opinion of the engineer is required urgently for the safety of the works, due to an accident, or unforeseen incident, or for other reasons.

The contractor shall adhere with engineer's instructions, and to implement it within a reasonable period not exceeding the period specified (if any) in the instructions, or to implement it immediately if the matter is related to the implementation of a work of immediate nature as required in paragraph (c) above.

If the contractor failed to comply with the engineer's instructions, the employer is authorized to use other persons to carry out such work and pay him in exchange for his work. And except for and to the extent that the contractor shall be entitled to a payment in connection with this work, the contractor shall, pursuant to paragraph (2-5) pay the employer all the expenses resulting from such failure.

#### **7-7 Ownership of the Mechanical Supplies and Materials:**

Unless otherwise stated in the contract, any items of the mechanical supplies and materials, and to the extent that consistent with the laws of the state, become the property of the employer (free of any mortgage or the rights for third parties) as of the closest date of the following:

- a) When entered to the site, or installed in the works;
- b) When the contractor receives a payment for the value of the mechanical supplies and materials pursuant to paragraph (8-10) (payment for mechanical supplies in case of work suspension).

#### **7-8 Revenues and Royalties:**

The Contractor shall - unless otherwise provided for in the specifications - pay royalties and rents and other payments related to the following:

- a) Natural materials that are obtained from outside the site;
- b) Remove debris, excavations results and other excess material outside the site (whether natural or manufactured), unless the contract involves the allocation of places to put the debris within the site.



## **Article Eight: Commencement, Completion Delay and Work Suspension**

### **8-1 Commencement of work:**

Unless otherwise stated in the contract data, the date of commencement shall be considered the date by which the previous conditions hereinafter referred to all has been achieved and the engineer announcement that both parties agreement is made and to instruct the contractor to proceed with the works:

- a) Signing of the contract agreement by the parties hereto and approved by the entity authorized to do so in the country of the works if required;
- b) Provide the contractor with the necessary evidence to prove that the employer has secured the financial arrangements for the contract (under paragraph (2-4) (financial arrangements of the employer) unless otherwise stated in the contract ; and
- c) The receipt of the site by the contractor as well as site-specific data and approvals referred to in subparagraph (a) of paragraph (1-13) (compliance with laws), required to start the work; and
- d) The receipt of the advance payment by the contractor under paragraph 14-2 (Advance Payment) after he has submitted his letter of guarantee of the advance payment.

If the contractor did not receive notice of the engineer to proceed within 180 days of the issuance of Award Letter, the contractor shall be entitled to request termination of the contract pursuant to paragraph 16-2 (termination by the contractor).

### **8-2 Completion Period:**

The contractor shall complete all works, and any part thereof (if any), within the completion period specified for the entire works, or any part thereof (as the case may be), and includes:

- a) Achieve success "tests upon the completion" ; and
- b) The completion of all works specified in the contract, as is required for the entire works or any part thereof; so that it can be considered that it has been completed for the purposes of receipt under paragraph (10-1).

### **8-3 Work Program:**

The contractor shall provide the engineer with a detailed timetable within (28) days from the date of receiving notice to proceed under paragraph (8-1). And he shall also submit a revised program at any time it appears that the former program is no longer in line with the actual progress or with the contractor's obligations, that each of these tables should include the following:

- a) The order in which the contractor plans to implement the works thereunder, including the expected timing for each of the design stages, and the preparation of contractor's documents, procurement, manufacturing of mechanical supplies, supply to the site, construction, installation, inspection, acceptance and commissioning;
- b) The period necessary to review, provide authentication and approval of contractor's documents as defined in the employer's requirements under paragraph (5-2);
- c) Stating the sequence and timing of inspections and tests specified in the contract;
- d) A supporting report covers:
  - 1) General Description of implementation methods to be adopted for each key stage of implementation.
  - 2) Exhibiting the contractor's reasonable estimates of Contractor's personnel classified according to the skills, and contractor's equipment log classified by types, which required his presence in the site for each key stage of implementation

And unless the engineer - within 21 days from the date of receipt of the program - make a comment and inform the contractor about the extent of non-conformity of the program to the contract, then the contractor shall have the right to carry out the implementation thereunder, taking into account its other obligations under the contract. And employer's personnel shall be authorized to rely on this program when planning to perform their activities.

The contractor shall give notice to the engineer immediately, on any possible events or future conditions that may adversely affect the implementation of the works, or increase the contract amount or delay the implementation process. And the engineer may ask the contractor to prepare his estimates for the results of such possible events or future conditions and / or provide his suggestions under the provisions of paragraph (13-3) related to changes.

If the engineer notified the contractor at any time that the work program is no longer consistent with the contract (stating the extent of such in-consistency) or that it is not commensurate with the actual progress of the implementation and the planned objectives of the contractor, the contractor shall provide a revised work program to the engineer pursuant to the provisions of this "paragraph".

#### **8-4 Extension of Completion Period:**

The contractor shall be entitled – subject to paragraph (20-1) – to obtain an extension of **completion** period if a delay occurred or expected to occur and the extent of its impact on the delivery date of the works for the purpose of applying paragraph (10-1), for any of the following reasons:

- a) Change, except if it has been agreed to amend the completion period under paragraph (13-3);
- b) Any reason for the delay justifies the extension of the completion period under any of these conditions;
- c) Exceptional adverse weather conditions;
- d) The unforeseeable shortage in the availability of personnel or implementation's requirements as a result of an epidemic or change of government's measures; and
- e) Any delay or hinder or prevention attributed to the actions of the employer or his personnel, or any of the other contractors working on the site for its own account.

If the contractor considers that he has the right to an extension to "completion period", he shall notify the engineer pursuant to paragraph (20-1). When the engineer estimates each extension of the period under paragraph (20-1), he has to reconsider his previous estimates and may increase, but shall not decrease the total extension for completion period.

#### **8-5 Delay Due to Authorities:**

The delay or hindrance shall be considered a cause of delay under Para b of item (8-4 ), in the following cases:

- a) If the contractor responded seriously in following the procedures established by the competent authorities legally.
- b) These authorities have caused delay or hindered the contractor's work.
- c) That this delay or hindrance was not foreseeable

#### **8-6 Percentage of Work Progress:**

If it found out at any time:

- a) That the actual progress is very slow where completion becomes unattainable during the completion period; and / or
- b) That the work progress is delayed (or will be delayed) from the timing of current program referred to in paragraph (8-3) and this was not due to one of the reasons mentioned on paragraph (8-4), then the engineer may issue his instructions to the contractor pursuant to paragraph (8-3) so the contractor can prepare a revised work program, supported by a report showing the modified methods that the contractor intends to follow to accelerate the rate of work progress and its completion within the completion period.

And unless the engineer issued instructions otherwise, the contractor shall proceed using the modified methods that might require increase in working hours and / or the number of contractor's personnel and / or the implementation requirements, on contractor's responsibility and cost. But if these modified methods led to the employer bears the extra cost, then the contractor shall - in accordance with the provisions of

paragraph (2-5) - pay this additional cost to the employer, in addition to any penalties for the delay (if any) under paragraph (8-7) later.

Employer shall pay the additional cost resulting from a review of implementation methods issued by the engineer in order to accelerate the pace of work and to reduce the delay for the reasons listed in paragraph (8-4) (extension of completion period) without causing any additional payment realized to the contractor.

#### **8-7 Delay penalties:**

If the contractor failed in the obligation to complete the works in accordance with the provisions of paragraph (8-2), he shall pay the employer pursuant to the provisions of paragraph (2-5) delay penalties resulting from such failure, and these penalties shall be in the amount stipulated in the **contract data**, on each day that passes between the period specified for completion and the date specified in the initial acceptance certificate of the works, but the total penalties payable under this "paragraph," shall not exceed the maximum delay penalties (if any) as stipulated in the **contract data**.

These delay penalties shall be all what the contractor has to pay for such failure, except in the case of contract termination by the employer under paragraph (15-2) before completion of the works, and these penalties shall not relieve the contractor from the obligation to complete the works or of any of his duties or obligations or other responsibilities mentioned in the contract.

#### **8-8 Work Suspension**

The engineer may - at any time - issue instructions to the contractor to suspend the work in any part of the works or all. The contractor shall, during this suspension, protect and store and maintain the works or the part of it against any deterioration, loss or damage.

And the engineer may also state the reasons for suspension in his notification. If the reason for suspension is the responsibility of the contractor, then the provisions of the following paragraph (8-9, 8-10, and 8-11) shall not apply.

#### **8-9 Consequences of Work Suspension:**

If the Contractor incurs a delay in the completions period and / or a cost due to his compliance with the instructions of the engineer to suspend the work pursuant to paragraph (8-8), and / or resume work, the contractor may give notice to the engineer thereon, to estimate what the contractor's dues pursuant to paragraph (20-1) concerning:

- a) Any extension in the completion period due to this delay, if the completion had been delayed or will be delayed, under paragraph (8-4) ; and
- b) Any such cost to be added to the contract amount.

After receipt of notice by the engineer, he shall reconsider it under the provisions of paragraph (3-5) to be agreed on or prepare his estimates in regard of these matters.

Note that the contractor shall not have the right in any extension in the completion period or refund the cost incurred due to his repairing the result of the defect in his designs or materials or workmanship or for any failure by him in storing or protecting or maintaining the works in accordance with the provisions of paragraph (8-8).

#### **8-10 Payment for Mechanical Supplies and Material in case of Work Suspension:**

The contractor is entitled to be paid the value of the mechanical supplies and / or materials (as they are on the date of work suspension) that are not supplied yet to the site, if:

- a) The work on mechanical supplies, or the supply of mechanical supplies and / or materials has been suspended for a period more than (28) day.

- b) The contractor considered that such mechanical supplies and / or materials has become the property of the employer in accordance with instructions issued by the engineer.

#### **8-11 Prolonged Suspension:**

If the work suspension continued under paragraph (8-8) for more than 84 days (unless otherwise indicated in the special conditions), contractor may ask the engineer to authorize him to resume work. If the engineer did not permit the contractor to resume work within the (28) days following the date of request, contractor may, after notice to engineer, treat that suspension as a cancel under "Article Thirteen" for that part of the works affected. But if the suspension affects the entire works, the contractor may give notice to terminate the contract from his part pursuant to paragraph (16-2).

#### **8-12 Resumption of work:**

If instructions or permission issued from the engineer to resume the work, the contractor and the engineer combined, shall carry out inspection (detection) on the works, mechanical supplies and materials affected by the suspension, and the contractor shall repair any deterioration or defect or loss incurred during such period of suspension after receiving the engineer's direction under Article thirteen (changes and amendments).

## **Article Nine : Tests upon Completion**

### **9-1 Contractor's Obligations:**

The Contractor shall conduct a "Tests upon completion" in accordance with the provisions of this "article" and paragraph (7-4), after submitting the documents required of him under paragraph (4-1-d).

The contractor shall notify the engineer through a notification in period of not less than (21) days from the date when the contractor shall be ready to carry out any of the tests upon completion. Unless otherwise agreed, these tests shall be conducted within (14) days after this date, in the day or days specified by the engineer.

The engineer shall, when evaluating the results of "tests upon completion", obtain an appropriate permit to consider any use of works with the knowledge of the employer on the performance or other characteristics of the works. And the contractor shall provide a certified report of the results of such tests to the engineer, when works, or any part thereof, are considered has passed the "tests upon completion" stag.

### **9-2 Delayed Tests:**

If the employer delayed the tests upon completion without justification, the provisions of the fifth paragraph of paragraph (7-4) and / or paragraph (10-3) with respect to interference in conducting the tests shall apply.

And if it the conduct of "tests upon completion" is delayed by the contractor without justification, the engineer may give notice to the contractor asking him to conduct the tests within 21 days after the date of receipt of the notice, the contractor shall conduct the tests during that period on the day or days determined by the contractor, provided that the engineer shall be notified of that.

But if the contractor failed to carry out "tests upon completion" during the period of the (21) days, the employer's personnel may carry out the tests on contractor's responsibility and expense, and these tests are considered as if it had been conducted in the presence of the contractor and their results shall be accepted as true.

### **9-3 Retesting:**

If the works or any part thereof failed to pass "tests upon completion", t

En the provisions of paragraph (7-5) shall apply thereto. The engineer or the contractor may request to conduct the retesting for the part of the works that failed in passing the tests, provided that tests shall be re-conducted under the same terms and circumstances.

### **9-4 Failure in passing the Tests upon Completion:**

If the works or any part thereof failed in passing the "tests upon completion" after retesting under paragraph (9-3), the engineer shall be authorized to take any of the following procedures:

- a) To order the repeat the test upon completion once again under paragraph (9-3);
- b) If this failure leads to the loss of employer the full benefit of the Works or any part thereof materially, the engineer may reject the works or any part thereof (as the case may be), and in this case the employer shall have the right to obtain same penalties set out within the provisions of item (11-4-c); and
- c) That the engineer to issue the initial acceptance certificate of the works, if requested by the employer.

In case of applying paragraph (c) above, the contractor shall continue in performing his other obligations under the contract, and the contract amount shall be decreased in an appropriate amount to cover the decrease in realized value for the employer as a result of this failure. Unless this reduction that is related to this failure is defined in the contract (or its calculation method is defined), the employer may request evaluation of the reduction in one of the following two methods:

1. Agreement between both parties shall be reached (as a full compensation for this failure only) and the compensation shall be paid before the issuance of the initial acceptance certificate of the works; or
2. It shall be evaluated and paid for under the provisions of paragraphs (2-5) and (3-5).

## **Article Ten : Receipt of Works by the Employer**

### **10-1 Receipt of Works and Parts of Works:**

Except for the text in paragraph (9-4) with respect to the failure to pass the "tests upon completion," the employer shall receive the works when:

1. Works have been completed according to the contract, including the matters specified in paragraph (8-2) related to the completion, and with the exception of what is allowed under paragraph (a) below, and
2. The initial acceptance certificate of the works has been issued, or shall be considered as have been issued in accordance with the provisions of this "paragraph."

The contractor may request the engineer to issue the "initial acceptance certificate of the works" in a period no less than (14) day from the date where the works – in the opinion of the contractor – have been completed and ready for delivery. If the works were divided into sections, the contractor shall submit an application to hand over any of them in the same manner.

The engineer shall carry out, within (28) days after the date of receipt of the request from the contractor, the following:

- a) Issue the initial acceptance certificate of the works to the contractor specifying in it the date in which the works or any part thereof has been completed under the contract, except for any secondary works remaining or defects that do not affect significantly the use of the works - or any part thereof - for the purpose for which it was created, (these works to be completed and defects to be repaired) ; or
- b) Reject the request, stating the reasons, and determining the work that the contractor shall complete so the initial acceptance certificate of the works can be issued. The contractor shall complete such work before giving another notice to deliver the works under the provisions of this Article.

But if the engineer did not issue the initial acceptance certificate of the works or did not reject the contractor's request during the (28) day period, and the works or part thereof (as the case may be) has been completed substantially according to the contract, then the "initial acceptance" certificate shall be considered as if it were already issued on the last day of that period.

### **10-2 Receipt Parts of the Works:**

The engineer may - at the discretion of the employer solely - to issue an initial acceptance certificate of any part of the permanent works. And the employer shall not use any part of the works (other than use as an interim measure stipulated in the contract or agreed between the parties thereon) unless or until the engineer issue the acceptance certificate of the works for that part. But if the employer used any part of the works before issuing the initial acceptance certificate:

- a) This part of the works that has been used shall be considered as if it been received from the date of the beginning of its use;
- b) The responsibility of care for that part of the works shall be transferred to the employer as of that date, and the contractor's responsibility of care for that part shall stop; and
- c) The engineer shall issue initial acceptance certificate for that part, if so requested by the contractor.

After the engineer issue the initial acceptance certificate of the works for some part of the works, the contractor shall be allowed the opportunity as soon as possible to complete the necessary steps to carry out what remains of "tests upon completions" and the contractor shall perform these tests as soon as practicable and before the expiration of the "maintenance period" pertaining to that part.

If the Contractor incurs a cost as a result of employers' receiving part of works and / or use it - unless it is provided for in the contract or been approved by the contractor - the contractor shall:

1. Give notice to the engineer; and
2. The contractor's dues shall be estimated concerning this cost, taking into account the provisions of paragraph (20-1), adding to it a reasonable profit margin to be added to the contract amount.

The engineer shall, after receipt of such notification, and pursuant to the provisions of paragraph (3-5) agree on the cost and profit, or their estimates.

If the initial acceptance certificate for some part of the works has been issued, the delay compensation for what remains of the works shall be reduced, and similarly, the delay compensation for the remainder of the some part of the works (if any) if some part of it have been received, they shall also be reduced. As for reduction in delay compensation, it shall be calculated in proportion to the value of that part

which has been received attributed to the total value of the works or part of the works (as the case may be). The engineer shall, pursuant to the provisions of paragraph (3-5), approve it or to prepare estimates for these percentages. Note that the provisions of this paragraph shall not apply only to the daily amount of delay compensation under paragraph (7-8) and shall not affect its maximum amount.

### **10-3 Interference in the Conducting of Tests upon Completion:**

If the contractor was unable to perform "tests upon completion" - for a period exceeding

14 days - for any reason then the employer shall be considered responsible thereof, and that such works or any part thereof shall be considered (as the case may be) that they have been received from the employer on the date where achieving "tests upon completion" was possible.

The engineer shall issue the initial acceptance certificate of the works in accordance with that, but the contractor shall conduct tests upon completion as soon as practicable before the expiry of "maintenance period". And the engineer shall give notice within a period of (14) day includes conducting tests upon completion under the conditions related to the contract.

If the contract incurred a delay in completion period and / or a cost as a result for such delay in conducting test upon completion, the contractor may give notice to the engineer to estimate his dues thereon taking into account the provisions of paragraph (20-1) regarding:

- a) Any extension in the completion period of which resulted in the delay, if completion had been delayed or will be delayed, under Article (8-4) ; and
- b) Any such cost to be added to the contract amount.

The engineer shall – after receiving contractor's notification – approve it or make estimates in relation to such matters pursuant to the provisions of paragraph (3-5).

### **10-4 Surfaces Required to be Returned to its Previous condition**

Except as provided otherwise in the acceptance certificate of the works, the initial acceptance certificate of any section or part of the works, shall not be considered an endorsement on the completion of any work for the land or the surfaces required to be returned to its former position.

## **Article Eleven : Responsibility for Defects**

### **11-1 Completion of the Remaining Work and Repair of Defects:**

In order for the works, contractor's documents, and any part thereof, in the case required by the contract (except as may result from normal use and expected consumption) on the expiry of the maintenance period relating thereto, or immediately after it in the shortest practically possible period, the contractor shall:

- a) Complete any remaining work as of the date specified in the acceptance certificate of works, within a reasonable time and according to the engineer's instructions ; and
- b) Implement all works required to repair the defects or the damage, according to employer's instructions (or his representative), and before the expiration of the maintenance period in such works or any part thereof (as the case may be).

And if a defect or damage occurs, the employer (or his representative) shall give notice to the contractor thereon.

### **11-2 Cost of Repairing the Defects:**

Contractor shall bear the cost of all the works referred to in paragraph (11-1 - b) on his own responsibility and expense, if and to the extent to which these works are attributable to:

- a) Any design where the contractor is considered responsible for;
- b) The provision of mechanical supplies or manufactured materials in violation of contract conditions ; and
- c) Any failure from the contractor to comply with any other obligation.

But if and to the extent to which these works attributed to any other reason, "that does not belong to the contractor", in whole or in part, the contractor shall be informed by the employer (or on his behalf), without delay, and in such a case the provisions of paragraph (13 -3) relating to make the changes shall apply.

### **11-3 Extension of Maintenance Period (during maintenance period)**

The employer shall have the right to extend maintenance period in the works or any part thereof, under paragraph (2-5), with a period equal to the maintenance period mentioned in contract data not exceeding two years, if such works or any part thereof, or any key item of mechanical supplies (as the case after his receipt) cannot be used for the purposes intended, due to the existence of a defect or damage.

If the supply of mechanical supplies and / or materials or their installation has been suspended under paragraph (8-8) or based on contractor's procedures under paragraph (16-1), the contractor's obligations according to the provisions of this "article" shall not apply on any defects or damage that may occur after two years from the deadline in which the notice period of repairing defects will expire for such mechanical supplies and / or materials, if such suspension never happened.

### **11-4 Failure to Repair Defects:**

If the contractor failed to repair any defect or damage within a reasonable period, the employer (or his representative) may give notice to the Contractor specifying another reasonable date to repair such defects or damage prior to its expiry. If the contractor failed to repair the defect or damage at this deadline referred to, and this resulted that repair to be carried on the contractor's expense, in accordance with paragraph (11-2), the employer may take any of the following procedures (at his choice):  
:Implement the work by himself or through third parties, in a reasonable manner



- a) and on contractor's expense, but without contractor bearing any responsibility for this performed work. In such case, the contractor shall - according to paragraph (2-5) - pay to the employer the costs reasonably incurred to repair the defect or damage;
- b) To request the engineer to reach an agreement or to prepare his reasonable estimates to reduce the value of the contract for it according to the procedures of paragraph (3-5);
- c) If the defect or damage leads to depriving the employer substantially from taking full advantage of the works or any key part thereof, he may terminate the contract as a whole, or terminate that part, including the key part thereof, which cannot be used for its intended purposes. And without prejudice to any other rights entailed to him under contract or other reasons, the employer shall have the right to recover all amounts that have been paid to the contractor for the works or for that part (as the case may be), adding to it the funding costs and the expenses of dismantling and evacuation of the site and returning the mechanical supplies and materials to the contractor.

#### **11-5 Removal of Defective Works:**

If the defect or damage cannot be repaired at the site on an urgent basis, the contractor may - after obtaining employer's approval - transfer from the site in order to repair them, any parts of the mechanical supplies that are defective or damaged, but that such approval may require assigning the contractor to increase the value of the performance guarantee equivalent to full replacement value of such mechanical supplies removed, or to provide another appropriate guarantee in respect thereof.

#### **11-6 Further Tests:**

If the repair work for any defect or damage has an impact on the performance of the works, the engineer may request the re-perform any of the tests described in the contract, including completion tests and / or after-completion tests provided that such request is made within (28) days from the date of completion of the repair of the defect or the damage. Such tests shall be conducted in the same conditions under which the previous tests have been conducted, but the cost of performing such tests shall be borne by the party who is responsible for the defect or damage as may be specified under paragraph (11-2) with respect to the cost of the repair work.

#### **11-7 Right of access to the site:**

The contractor shall have the right, till the issuance of the certificate of performance (the final acceptance certificate of the work), to access to all parts of the works and view the operation and performance records. Except with matter inconsistent with the reasonable security considerations of the employer

#### **11-8 Contractor Duty to Look for Reasons:**

The Contractor shall - if requested by the engineer - and under the supervision of the engineer to look for the reasons of any defect in the works. And unless the cost of repairing defects are at the contractor's expense under the provisions of paragraph (11-2), the engineer shall estimate the cost of the process of looking for reasons, with the profit margin, in accordance with the provisions of paragraph (3-5), either by agreement or prepare the required estimate thereof, to be added to the contract amount.

#### **11-9 Final Acceptance Certificate of the works:**

Contractor shall not consider that he has fulfilled his obligations only after the engineer issued "final acceptance certificate of the works" for the contractor, stating the date on

which the contractor is considered has completed the obligations required of him under the contract.

And the engineer shall issue the "final acceptance certificate of the works " within (28) days after the expiration of the last period of the maintenance periods, or at the earliest opportunity after the contractor has submitted all " contractor's documents" and completed the works and all have been tested including the repair of any defects therein, and a copy of the final acceptance certificate shall be send to the employer. The "final acceptance certificate of works" solely without others is considered representative of accepting the works.

#### **11-10 Unfulfilled Obligations:**

Each party shall, after the issuance of the "final acceptance certificate of the works", remain liable for the fulfillment of any obligation that has not been completed to date. Accordingly, the contract remains in force between the two parties until the determination of the nature and extent of the unfulfilled obligations.

#### **11-11 Site Evacuation:**

The Contractor shall, upon receipt of the final acceptance certificate of the works, remove from the site the remaining of contractor's equipment, surplus material, debris and waste and temporary works.

And if not all of the equipment and implementation accessories has been removed within (28) days after the date of employer receipt a copy of the "final acceptance certificate", the employer shall be entitled to sell or dispose of their remnants. The employer shall be authorized to recover the costs he incurred for the completion of the sale or disposal process and restoring the site.

And then he pays the contractor any surplus balance of the sale proceeds. If the value of what has been collected is less than what the employer spent, the contractor shall pay the remaining balance to the employer.

## **Article Twelve : Measurement of Works and Estimation of Value**

### **12-1 Measurement of Works:**

Works are measured and valued for the purpose of paying its values under the provisions of this Article. The contractor shall clarify, in every application for an interim payment under paragraph (3-14) or when submitting a request for the completion payment (installment) under paragraph (10-14) or his request for the final payment (installment) under paragraph (11-14), the quantities and any special details of its amounts owed under the contract. When the engineer makes a request to carry out measurement for any part of the works, he shall send a written notice to the contractor's representative, who shall:

- a) Immediately comply, either by being present or send another qualified representative to assist the engineer in conducting the measurement; and
- b) Provide all details required by the engineer.

If the contractor failed to appear or send a representative, then the measurement being prepared by the engineer (or his representative) shall be the correct measurement of the work.

Except as otherwise provided in the contract, and where measurement of permanent works requires the use of records, the engineer shall prepare them. The contractor, while requested therefore, to attend to examine the records to agree upon with the engineer, and then sign it upon approval. If the contractor failed to appear, then the records shall be considered acceptable and certified.

If the contractor examined the records and did not approve them and / or did not sign them by approval, he has to notify the engineer of this, stating the matters that he sees as incorrect in these records.

And the engineer shall after the receipt of this notification review the records and either confirms them or makes amendment thereon and approves the payment of the undisputed parts. In the event that the contractor did not send such notice to the engineer within (14) days after the date of the call for examination, the measurement carried out by the engineer is considered final and approved.

### **12-2 Method of Measurement:**

Except as otherwise provided in the contract, notwithstanding any local customs, the measurement shall be carried out is as follows:

- a) The measurement shall be for the actual net quantities implemented from each item of permanent works geometrically; and
- b) The measurement method shall be according to the table of quantities or any other tables applicable.

### **12-3 Estimation of Value:**

Except as provided otherwise in the contract, the engineer shall - pursuant to the provisions of paragraph (3-5) – make agreement on the contract amount or estimates it by calculating the value of each item of the works, by adopting the measure approved or that is estimated under the provisions of paragraphs (12-1 and 12-2) above, and the unit price determined for the item shall be the unit price of the item as specified in his contract, and if the item does not exist, unit price for a similar item shall be relied on. If any item of the works mentioned in the table of quantities does not have a price or amount, then its price and the amount shall be mentioned implicitly in the prices and amounts of other items in the table of quantities and payment for them shall not be made individually. Otherwise, it is necessary to determine a suitable new unit price for item of the works, in the following cases:

- a) If the quantity measured for this item changed by more than (20%) of the amount recorded in the table of quantities or any other table, and the result of

multiplying the change in quantity by the unit price specified in the contract for this item, exceeds (0.1%) of the "accepted contract amount". and reference has not been made in the contract as it is "fixed price" item; or

- b) That work had issued change instructions thereon under the provisions of Article Thirteen and there is no unit price recorded for this item in the contract. And there is no unit price specified appropriately, due to the nature of work which is not similar to any provision of the terms of the contract, or that the work is not implemented within conditions similar to its conditions.

The new unit price is derivate from the price of the relevant terms of the contract, with reasonable amendments to include the effect of matters described in paragraphs (a) and

/ or (b) above, as applicable.

And if there are no relevant items to derive the new unit price, it shall be derived by determining the reasonable cost of the implementation of the works, plus a reasonable profit margin, taking into account any other relevant matters.

And until time comes to reach an agreement on the appropriate unit price or its estimation, the engineer shall temporarily put a unit price for the purposes of the progress (interim) advances.

#### **12-4 Cancellations:**

When the cancellation of any work forms part of or the entire change, and agreement had not been reached to determine its value:

- a) If the contractor shall incur (or has incurred) a cost that was not supposed to be covered in an amount that forms part of "the approved contract amount", As if the cancellation did not happen;
- b) The cancellation of work will result (or has resulted in) that this amount is no longer a part of the contract amount; and
- c) That this cost cannot be considered included in the estimation of value of any alternative work.

In such a case, the contractor shall give notice to the engineer, with supporting details. And the engineer shall also, when receiving this notice - pursuant to the provisions of paragraph (3-5) - agree, or to prepare necessary estimate for such a cost, to be added to the contract amount at the commencement of that part of works.

## **Article Thirteen: Changes and Amendments**

### **13-1 Authority to Make Changes:**

The engineer may, at any time and before the issuance of the initial acceptance certificate of the works and after approval from the employer, proceed to make changes in the works, whether through instructions he issues, or by request to the contractor to submit a proposal to be considered.

The contractor shall comply with each change (change order) and implement it, unless the contractor gave notice without delay, to the engineer informing him:

1. His inability to obtain the implementation supplies required for the implementation of changes works on time;
2. That change will significantly affect the achievement of the undertakings schedule.

The engineer shall, as soon as he receives such notice, cancel or confirm or amend his instructions.

Each change [Change Order] may include the following:

- a) Changes in the quantities of any item of the works covered in the contract (but such changes shall not necessarily constitute a change order) ;
- b) Changes in the quality or other specifications of any work items;
- c) Cancellations in the levels and places and / or dimensions of any part of the works;
- d) Cancellation any of the works (only if will be implemented by others);
- e) The implementation of any additional work, or the provision of mechanical supplies or materials or services that are required for permanent works, including any "test upon completion" related thereto, or the making of sensors or checks or other exploratory processes; and
- f) Changes in the sequence or timing of the implementation of works.

The Contractor shall not be entitled to make any change and / or any amendment to permanent works, unless and until the engineer instructs or approve conducting the change.

### **13-2 Engineering Assessment:**

The contractor may at any time to submit a written proposal to the engineer, which displays his opinion, that if adopted, it:

1. Shall accelerate the completion of the work;
2. Shall reduce the cost of the works (for the employer's benefit) regarding the process of implementation or maintenance or operation of the works;
3. Shall improve the efficiency and value of the work performed for the benefit of the employer;
4. Shall achieve benefit to the employer in general.

The proposal shall be prepared at the expense of the contractor, and shall conform to the requirements of making changes specified in paragraph (13-3) later.

If contractor's proposal, which the engineer approves, comprised an amendment to the design of any part of the permanent works, the following shall be conducted (unless the parties have agreed otherwise):

- a) That the contractor shall develop the design of that part;
- b) The provisions of paragraphs (4-1-a,b,c,d) related to the general obligations of the contractor shall apply; and
- c) If this amendment resulted in a reduction in the amount of the contract for this part, the engineer, in accordance with the provisions of paragraph (3-5), shall agree on it or estimate the fees allowances resulted from amending the design to be included in the contract amount. And this allowance shall be equal to (50%) of the difference between the two following amounts:

- 1) Reduction realized in the contract amount for this part, which is the result of the amendment, except for amendments due to changes in legislation under paragraph (13-7), and the amendments due to the change in costs under paragraph (13-8).
- 2) Shortfall (if any) when making the amendment in the material value of those changed parts for the employer, taking into account any shortfall in the quality or the life expectancy or the operational efficiency of the facilities.

But, if it founds out that the value of the amount (1) less than the value of the amount (2), then any allowance fees shall not be calculated.

### **13-3 Change Procedures:**

If the engineer proposed to the contractor, prior to issue instructions, a change, then the contractor shall respond to the request in writing as soon as practicable, either by giving reasons for its inability to comply (if this is the case), or to provide the following:

- a) A description of the works that he proposed to be implemented and the timetable for its implementation;
- b) Contractor proposals for any amendment required on the timetable in accordance with paragraph (8-3), and its impact on the completion period of the works;
- c) Contractor proposal to calculate the change value.

The engineer shall, as soon as practicable after receipt of the contractor's proposal (under paragraph (13-2) or otherwise), respond to the contractor either to approve or disapprove, or to send him his remarks, noting that the contractor shall not postpone the implementation of any work during the period of waiting for the response.

Any instructions to implement a change, and any order for the requirements of costs registration, shall be issued by the engineer to the contractor, and the contractor shall inform him of the receipt of such instructions.

The value of each "Change" under the provisions of "Article Thirteen" shall be estimated, unless the engineer has issued instructions or approved otherwise in accordance with the provisions of this Article.

### **13-4 Payment in currencies Accepted:**

If the contract stated on payment of contract amount in more than one currency, then, if agreed on any price adjustment or being approved, or an estimate is made in respect thereof, as mentioned above, the amount that will be paid in each currency payable shall be determined. Accordingly, reference should be made to the actual or expected percentages of currencies to be paid in terms of the cost of the work changed, and the percentages of various currencies specified for payment of the contract amount.

### **13-5 Reserve Amounts:**

Each reserve amount shall be used that has been allocated in whole or in part in accordance with the instructions of the engineer only, and the contract amount shall be adjusted accordingly.

The total amount to be paid to the contractor shall not include only those amounts related to the work or supplies or services that the reserve amount been allocated for, according to engineer's instructions. For each reserves amount, the engineer may issue instructions concerning the following:

- a) For a work performed by the contractor (including the mechanical supplies or services required to be provided), and its value shall be assessed as a change under paragraph (13-3) ; and / or
- b) Mechanical supplies or materials or services purchased by the contractor from the named subcontractor according to article five or other, and its value shall be assessed as follows, to be added to the contract amount:

- 1- The actual amounts paid by the contractor (or payable of him). And

- 2- The amounts for administrative expenses and profit, calculated as a percentage of these actual amounts by applying the relevant percentage (if any) as specified in any of the appropriate tables, if such a percentage is not mentioned in the tables, then by the percentages specified in the **contract data**.

The Contractor shall, when requested by the engineer, provide him with priced offers, invoices, documents and accounts or evidentiary receipts.

### **13-6 Daily Paid Work:**

The engineer may issue his instruction to implement the change on the basis of daily paid works for small businesses or of emergency nature, and is then evaluated under the "daily paid works table" covered by the contract, and with the procedures specified later. If the contract does not contain a table of "daily paid works ", the provisions of this Article shall not apply.

The Contractor shall - before confirming the purchase order of implementation requirements - submit to the engineer quoted proposals, and he shall also, when submitting payment orders, to submit receipts, documents and accounts relating to any of the implementation requirements.

And with the exception of any items which have not been identified in the table of daily paid works to be paid for, the contractor shall provide accurate daily statements (in two copies) include the following details of the resources that have been used in the implementation of the previous day's work:

- a) Names, jobs and working period of the contractor's personnel.
- b) Specifying the types and operation period of contractor's equipment and the use of temporary works.
- c) Quantities and types of mechanical supplies and materials used.

The engineer shall sign a single copy of each statement (detection) if he finds it true or agreed upon, and then return them to the contractor. After that the contractor provides a priced statement (detection) of these resources to the engineer before including them in the next batch statement (detection) under the provisions of paragraph (14-3).

### **13-7 Amendments due to change in legislations:**

The contract amount shall be amended to take into account any increase or decrease in cost as a result of any change in the laws of the country (including the enactment of new laws and cancel or delete existing laws) or the judicial or government interpretations thereof, and if that change occurred after the basic date, and resulted in an impact on the contractor's performance of his obligations under the contract.

If the contractor incurred (or he would incur) a delay and / or additional costs as a result of these changes in the laws or in the interpretation, took place after the basic date, the contractor shall give notice to the engineer to assess his requirements in this regard, taking into account the provisions of paragraph (20-1), regarding:

- a) Extension of the completion period due to the delay, if the completion had been delayed or will be delayed, under paragraph (8-4) ; and
- b) Any such cost to be added to the contract value.

After engineer receipt of such notice, he shall- pursuant to the provisions of paragraph (3-5) –reach an agreement thereof or prepare the necessary assessment in terms thereof.

Further to the aforementioned, the contractor shall not be entitled to any extensions in the work period if the delay had already been considered in the extension of the contract duration, and no cost will be paid the for that if it had been considered in the input of the revisions of prices list under paragraph (13-8) (Amendments due to costs change).

### **13-8 Amendments due to Costs Change:**

In the case of the application of the principle of price amendments due to costs change, it shall be done according to what is included in the table of price adjustment data accompanied to contract data, and for each of the local and foreign currency specified in the table of quantities.

The term "data amendment table contained in this" paragraph means the data amendment table completed and annexed to the tender offer attachment, in the absence of such a table, the contents of this paragraph shall not apply. In the case of the application of the provisions of this "paragraph", the amounts paid to the contractor shall be amended to include the impact of increases or decreases for any rise or fall occurring in labor wages or prices on the implementation supplies and other requirements of the works, by applying the equations listed in this article. And to the extent to which a compensation is comprehensive for any increase or decrease in the cost that is not covered under the provisions of this paragraph or the provisions of any other items in the contract, the "value of the contract accepted" shall be deemed to contain accidental amount to compensate for other fluctuations in costs.

The amendment in the amounts payable to the contractor shall be calculated (as their value are assessed by using the appropriate tables and through the ratification of payment certificates) and by applying the following equation, but for cases of payment in different currencies separately, note that this amendment shall not apply to any work being assessed on the basis of costs or prices prevail.

$$\text{Adjustment factor (t)} = a + b (5 p / p 1) + c (5 m / m 1) + d (5L/1L) + \dots$$

$$P_n = a + b (L_n/L_o) + c (E_n/E_o) + d (M_n/M_o) + \dots$$

Where:

T= Amendment coefficient (factor), multiplied by the assessed value in the currency involved in the contract during the time period (n) assessed by months, unless stated otherwise in the text of the tender offer attachment.

A= Fixed coefficient (factor), shall mean that part of the value assessed that is not changed, as specified in the relevant tables.

B, C.D= Coefficients (relative weights), which represents the ratios of the cost elements involved in the execution of works such as employment, equipment and materials.

P5, M5, L5= Coefficients of the current "price guide" of cost elements, in the forty ninth day which proceeds the period of assessment regarding the relevant payment certificate.

P1, M1, L1= Coefficients of the basic or reference "price guide" of cost elements on the day of the Basic Day for each currency.



Provided that the coefficient of "Prices Guides" or the reference price specified in the amendment evidence table shall be used, and if there was a doubt about their source, it shall be assessed by the engineer. And for this purpose, it must be guided by the values of the "Prices Guides" in specific dates until clarifying the said source; although these dates (and these values) may not fit with the reference Prices Guides (evidence).

In cases where the "Currency Guide" is not the currency specified in the table, it must conduct the necessary conversion in currency rates by adopting the sales price specified by the central bank on the applicability of the Prices Guides.

And until such time in which the current "Prices Guides" is being determined, the engineer shall put a temporary guide for the purpose of issuing the progress payment certificates, and at a time when the price guide is available, the calculation of amendment value shall be re-conducted accordingly.

\*If the contractor failed to complete the works within the completion period, the amendment on the amounts due after completion period shall be calculated by any of the two following methods:

1. Each price guide or price applicable in the forty-ninth day before the expiry date of the "completion period" of the works.
2. Prices Guide or current price. Whichever best for the employer.

As for the coefficients (relative weight) (B, C, D) of the constituent elements of the cost (P, M, L) specified in the amendments table(s), it shall not be reviewed unless they become unreasonable or unbalanced or that they no longer apply as a result of the changes.

## **Article Fourteen: Contract Amount and Payments**

### **14-1 Contract Amount:**

Unless otherwise provided in the special conditions:

- a) The contract amount shall be agreed upon or determined under paragraph (12-3) and this amount is subject to any amendments made pursuant to the provisions of the contract;
- b) The contractor shall pay all taxes, fees and wages required to be paid by him under the contract, and the contract amount shall not be amended due to any such expenses except what is stated in paragraph (13-7).
- c) The amounts written in the table of quantities or other tables are approximate quantities, and shall not be considered that they are the actual and accurate quantities of:
  - 1) Such works required to be implemented by the contractor;
  - 2) For the purpose of measurements and value assessment under "Article twelve".
- d) The Contractor shall provide to the Engineer, within (28) days from the date of commencement, his proposal on the analysis of the price of each item that has been priced in the tables as a lump sum. And the engineer may take this analysis into consideration when preparing the advances, but it is not binding for adoption.
- e) In addition to the provisions of paragraph (b) above, the contractor's equipment including the spare parts needed for maintenance and imported by him for the purposes of implementation of the works will be exempt from customs duties and taxes when imported.

### **14-2 Advance Payment:**

The employer shall pay the contractor an advance payment as a loan without interest for the purposes of preparation for work, designs and secure liquidity when the contractor provides the guarantee required of him under the provisions of this "paragraph". The total amount of the advance payment and the method of payment of its premiums (if numerous) and the payment currencies shall be in a manner specified in the **contract data**.

The provisions of this paragraph shall not apply in the case of non-receipt of guarantee from the employer, or if the amount of the advance payment has not been specified in the contract data.

The engineer shall, after receiving a certificate of advance payment pursuant to the provisions of paragraph (14-3), issue progress advance certificate or the first installment of it and send it to both the employer and the contractor, after the employer has received:

1. **Good** Performance guarantee under paragraph (4-2).
2. Advance payment guarantee equal in its amount and currencies to the amount of the advance payment, and shall be issued by a bank or a financial institution approved by the employer. And this guarantee shall be in the form attached to the special conditions or any other form approved by the employer.

The Contractor shall ensure the entry into force of the validity of the advance payment guarantee of till the repayment of the amount of the advance to the employer in full, but the amount of such guarantee may be reduced by first hand in the amount recovered from the contractor as being described in the advance progress certificate. If among the guarantee conditions its expiry on a specified date, the contractor shall, in such a situation, extend its validity until its full amount has been paid.

Unless otherwise stated in the contract, the amount of the advance shall be recovered through deductions in a percentage of progress advances approved by the engineer

under the provisions of paragraph (14-6) (Issuance of Progress Advance), as shown later:

- a) Deduction begins in progress advance payment certificate that its approved amount shall be (with exception of advance payment and discounts and cash deductions recoveries)(over 30%) of contract amount accepted net of reserved amounts; and
- b) Deduction is made by amortization specified in the **contract data** of the value of each progress advance (with the exception of the amount of advance and deductions relating to its recovery and cash deductions recovered) in currencies and discount percentage of advance payment, until the time comes where recovery of the advance payment is made. Provided that the recovery of the advance shall be in full before the time that dues payable have reached (90%) of the contract amount accepted, net of reserves amounts.

If the advance payment has not been recovered before issuing the initial acceptance certificate of the works or before the termination of the contract under the provisions of "Article Fifteen ", or termination of the contract under the provisions of "Article Sixteen ", or termination of the contract under the provisions of "Article Nineteen" - as the case may be - the balance of advance unpaid becomes due for payment and payable immediately by the contractor to the employer, as well as in the case of termination of the contract under Article Fifteen (Contract Termination by the Employer)

and paragraph (19-6) (Optional Termination of the Contract, Payment and Discharge of the Performance Responsibility).

#### **14-3 Submitting requests for interim Advance:**

Contractor shall submit to engineer after the end of each month a statement of the advance of work performed (in the number of copies required) so that the statement is organized in the sample approved by engineer, stating the details of amounts which the contractor consider are due to him, and accompanied by supporting documents, including the monthly report on the progress of work during this month under the provisions of paragraph (4-21).

The statement of the advance payment shall include the following items, as applicable, that shall be expressed in different payment currencies in which the contract amount is paid, in the following order:

- a) Estimated contractual value of works performed and contractor's documents provided until the end of the month and include changes. With exception of what is stated in (b) and (f) below;
- b) Any amounts to be added or deducted in exchange for price amendments due to changes in legislation or change due to the costs, pursuant to the provisions of paragraphs (13-7, 13-8);
- c) Any amount to be deducted as cash deductions, by the percentage specified in the **contract data** as a deduction from the total outstanding amounts in above, till the amount of deductions withheld by employer reach the maximum value of the cash deductions (if any), as specified in the **contract data**;
- d) Any amounts to be added to the advance payment and (if there is more than one premium) deducted for the purposes of recovery, under paragraph (14-2) (Advance Payment);
- e) Any amounts to be added or deducted of mechanical supplies and materials under paragraph (14-5) related to the preparations;
- f) Any amounts or other deductions may be realized under any provisions the contract, or otherwise, including those resulting from the provisions of "Article Twenty" ; and
- g) Discount the amounts that have been paid in all previous advances certificates.

#### **14-4 Schedule of Payments:**

If the contract included table of payments specifying the method of payment of the contract amount in installments, then and unless otherwise provided in the said table:

- a) Premium specified in table of payments shall be the estimated contractual values for the purposes of item (14-3- a) above;
- b) Paragraph (14-5) related to preparations for the works shall not apply;
- c) If premiums were not identified by reference to actual progress in implementation of works, and it found out that the actual progress of the works performed is less or more than what is specified in the table of payments, then the engineer may proceed applying the provisions of paragraph (3-5) to agree upon it or make rectified premiums that take into account the extent which work progress is delayed from the one that the previous determination of premiums has based on.
- d) If the contract did not contain a Table of Payments, the Contractor shall submit a non-binding estimates for the payments, which he expects it will be due to him at the end of each quarterly cycle, provided that the first estimate shall be submitted during (42) days after the date of commencement, and corrected estimates shall continue to be provided at the end of each quarter (quarterly basis), until the issuance of the initial acceptance certificate of the works.

#### **14-5 Mechanical Supplies and Materials to be Used in the Works (Preparations):**

The terms of provisions of this "paragraph" are available; progress advances shall be included, pursuant to paragraph (14-3-e) as follows:

1. An amount for preparation of mechanical supplies and materials that are supplied to the site for the purpose of being used in the permanent works.
2. The reduction in the values of items when contractual value of such mechanical supplies and materials are entered as part of permanent works under the provisions of paragraph (14-3-a).

If the lists referred to in clauses (b-1) and (c-1) not included in the tables below then the provisions of this paragraph shall not apply. The engineer shall estimate and approve every increase in the value of advances if the following conditions are available:

- a) The contractor has:
  1. Maintained adequate entries (records) ready for inspection (including purchase orders, receipts, costs, and the use of mechanical supplies and materials); and
  2. Submitted a statement of cost of purchase and delivery of mechanical supplies and materials to site, supported by sufficient probative evidence, and that any of the following:
- b) That the relevant mechanical supplies and materials :
  1. Are those mentioned in the contract data to be paid for upon shipment;
  2. Are shipped to the country, i.e. to the site, pursuant to the provisions of the contract.
  3. Are described within a true shipping document or any other shipping evidence, and has been delivered to the engineer with an evidence that proofs the payment of shipping and insurance fees and other documentation of evidence reasonably required, and a bank guarantee issued by a financial institution acceptable to the employer in the amounts and currencies specified under the provisions of this "paragraph". And this guarantee may be in a similar form for the form of advance payment referred to in paragraph (14-2), provided that it remains in force until the mechanical supplies and materials are delivered and stored properly at the site, and their protection against loss or damage or deterioration.

Or:

- c) That the relevant mechanical supplies and materials:
1. Those listed in the tables to be paid for upon supplied to the site.
  2. That they are delivered and stored at site properly and been protected against lost or damage or deterioration, and demonstrates that they meet the contract requirement.
  3. And then the additional amount that has been approved shall be equal to the percentages stipulated in the tender offer attachment of engineer estimates for the cost of mechanical supplies and materials (including the cost of delivery to the site), taking into account the documents mentioned in this paragraph and the contractual value of the mechanical supplies and material.

Payment of this additional amount shall be in similar currencies to that the advance payment due will be paid under item (14-3-a). And at that time, the advances shall be inclusive reduction, which shall be equivalent, to what is applied to this amount and payment shall be in types and percentages of currencies to be applied for the relevant mechanical supplies and materials.

#### **14-6 Issuance of interim Advances:**

No approval or payment of any amount shall be made to contractor, unless employer receives and approves a performance guarantee. And engineer shall, within (28) days from the date of receipt of statement of work performed and supporting documents, send to employer a progress advance certificate indicating the amount of which the engineer estimates that it is due to the contractor in an equitable manner, and accompanied by the supporting details for any deductions or amounts withheld by engineer on statement of installment (if any).

But engineer shall not be considered obligated before the issuance of the "initial acceptance certificate of the works" – to issue any progress advances certificate, if its value (after discounting cash deductions and other discounts) less than the minimum (if any) of the progress advance payment referred to in the **contract data**. In such a case the engineer shall give notice to the contractor in respect thereof.

The advances shall not be withheld for any other reason, except in the following events:

- a) If anything that has been supplied or any works has been performed by the contractor inconsistent with the contract, then the cost of repair or replacement may be withheld till the completion of such repair or replacement and / or
- b) If the contractor has failed (or is failed) in the performance of any work or obligation under the contract, and has been so notified by the engineer, the value of this work or obligation may be withheld until the work or the obligation has been implemented.

The engineer may, on any advance payment certificate, carry out any corrective work or amendment that should be done properly on the value of any previous advance payment certificate, and any advance payment shall not be considered an indication to the engineer's satisfaction or consent or conviction.

#### **14-7 Payment to the Contractor:**

Unless otherwise provided in the special conditions, employer shall pay the contractor:

- a) First installment of the advance payment within (42) days from the date of issuance of Award Letter, or within 21 days from the date of receipt of performance guarantee by the employer, pursuant to paragraph (4-2) and for the guarantee of the advance payment pursuant to paragraph (14-2), whichever is later;
- b) The certified amount for each progress advance payment certified, within (56) days from the date of receipt of the engineer of the installment statement and

supporting documents;

- c) The amount certified in the final advance payment within (56) day from the date of receipt of this advance by the employer.

Payment to the contractor shall be made for each amount owed in the specific currency, and deposit the money into the bank account designated by the contractor in the country of payment (for this currency) specified in the contract.

#### **14-8 Late Advance Payment:**

If contractor did not received any advance payment due to him under paragraph (14-7), he is entitled to be paid for any late payment, in a mixed accounts per month for the period of delay, this period shall be calculated from the date of payment mentioned in paragraph (14-7) regardless of date of issuance of progress advance (in case of item 14-

7-b).and unless otherwise provided in the special conditions, the financing expenses are accounted for on the basis of annual discount rate set by Central Bank in the currency of payment, plus an annual percentage (3%), to be paid by the specified currency for it.

Contractor shall be entitled to receive this payment without formal notice or certification, and without prejudice to any right or other compensation, provided that percent of financing expenses shall not exceed the percentage in accordance with the laws in force in the country of implementation of the works, unless otherwise provided in the special conditions.

#### **14-9 Payment of Cash Deductions:**

When the initial acceptance certificate of the works will be issued, the engineer shall release half the cash balance of deductions to the contractor. And if the initial acceptance certificate of the works is issued for part or a section of the of the works, then a percentage of the cash deductions shall be returned by calculating the relative value of that section and part, and this percentage shall be (50%) of the percentage resulted from dividing the estimated amount of the contract for that section or part on the amount of the final contract, as being estimated.

The Contractor shall be entitled, once the last period of maintenance periods is expired, to recover the balance of the remaining cash deductions by a certificate certified from the engineer. As for the expiration of the last period of notice of repair for a part of the works, It will be refunded the proportion from cash deductions equivalent to 50% from the value that is calculated by dividing the estimated amount of the contract for this section to the amount of the final contract as been estimated, immediately upon the expiration of the maintenance period related thereto.

If repair works appeared under the provisions of Article Eleven, the engineer shall have the right to withhold the estimated cost for such repair from the remaining value of cash deductions till their implementation is completed.

When calculating these percentages, it shall not take into account any amendments in prices due to changes in legislation pursuant to the provisions of paragraph (13-7) or due to the costs change pursuant to the provisions of paragraph (13-8).

Unless otherwise provided in the special conditions, the contractor shall be entitled, after the issuance of the initial acceptance certificate of the works and obtain the Engineer's approval to release the first half of the cash deductions, to provide a bank letter of guarantee from an accredited bank (in the form as referred to in the special conditions attachment) in exchange for the release of the second half of the cash deductions and that the letter of guarantee shall be in the same amounts and currencies for the second half of the cash deductions binding and valid until the completion of contractor of the works and his conducting repair of any defects, similar to the letter of guarantee for good performance referred to in paragraph (4-2). Once the employer receives the letter of guarantee in exchange for the release of cash deductions, the engineer shall recommend the payment and give notice to the employer to release the cash deductions.

This form to release the second half of the cash deductions in contrary to what is as stated in the second sentence of this paragraph is an alternative proposal and the employer shall release the letter of guarantee in return for the second half of cash deductions within 21 days from the date of his receipt of the final acceptance certificate of the final works.

If the amount of the performance guarantee referred to in paragraph (4-2) is more than half the cash deductions at the issuance of initial acceptance certificate, then the first half of the second cash deductions shall be released without the need for a new letter of guarantee in exchange for its amount. But if the amount of the performance guarantee is less than the half cash deductions, then the remaining half-cash deductions in exchange for a letter of guarantee shall be releases by the difference between the amounts of the performance guarantee and the half cash deductions remaining.

#### **14-10 Final Payment (on works receipt):**

The Contractor shall provide the engineer, during a period not to exceed (84) days from the date of receipt of the initial acceptance certificate of the works, a statement of the final advance - in (6) copies - with the supporting documents, according to the requirements of paragraph (14-3), stating in it:

- a) The value of all works that have been implemented under the contract till the specified date in the initial acceptance certificate of the works;
- b) Any other amounts the contractor considers it will be due to him;
- c) Estimates of any other amounts which the contractor considers it will be due to him under the contract, provided that it is to provide independent details of each of the these amount estimated in the final advance payments.

And then the engineer shall approve the installment payable under the provisions of paragraph (14-6).

The final advance payment shall not be paid only after the contractor provides a confirmation of receipt by the subcontractors and suppliers for their dues till the advance payment that precedes the final advance payment.

#### **14-11 Request of the final account certificate:**

The contractor shall provide the engineer, during the period of (56) days from the date of receipt of the final acceptance certificate of the work, a draft of final statement of account

- in six copies - with the supporting documents, in the form approved by the engineer, and showing the details of the following:

- a) The value of all the works that have been implemented under the contract; and
- b) Any other amounts the contractor considers he is entitled to under the contract, or otherwise.

If the engineer did not agree on the draft of the final statement of account, or not been able to verify some part of it, the contractor shall provide the necessary additional information requested by the engineer reasonably, and within 28 days of receipt of the draft of the final statement of account and the contractor shall amend it in the manner agreed between the parties, with a note that this statement (draft) in the manner agreed upon, called in these conditions the (final statement of account).

Nonetheless, if it showed as a result of the subsequent discussions between the engineer and the contractor and any amendments to the draft of the final statement of account to be agreed upon, a disagreement, the engineer shall prepare and submit to the employer a progress advance payment for those agreed parts of the draft of the final statement of account (with a copy sent to the contractor).

After that, if the disagreement is solved finally under the provisions of paragraph (20-4), or has been settled under the provisions of paragraph (20-5), the contractor at that time shall prepare and submit "final statement of account" to the employer, with sending a copy thereof to the engineer enhanced by the documents listed later on and according to what is stated in the special conditions of the contract:

1. Clearance from the competent authorities regarding foreign workers for this contract.
2. Clearance from the competent authorities that prove his payment of all dues of employees registered in the contract.
3. Clearance issued by General Authority of Customs and the General Authority of taxes.
4. Confirmation the receipt of subcontractors and suppliers of material accredited of all their dues.

#### **14-12 Letter of Release of Final payment Certificate:**

The contractor shall, when providing the statement of final account, deliver to the employer a written acknowledgment stating in it that the "statement of final account" forms the full and complete settlement of all amounts due to the contractor under the contract or related thereto.

It can be stated in this acknowledgment that it shall not be valid only after returning the performance guarantee to the contractor and his receipt of the remaining balance of the amounts due to him, and in this case the settlement of the final account shall be deemed valid as if this date.

#### **14-13 Issuance of Final payment Certificate:**

The engineer shall, within (28) days from the date of its receipt of the "final statement of account" under paragraph (14-11) and the letter of release of the final account under paragraph (14-12), send to the employer and a copy to the contractor the certificate of final account, showing in it:

- a) The amount due to the contractor finally ; and
- b) The balance due (if any) from the employer to the contractor or from the contractor to the employer (as the case may be), after calculating all payments paid by the employer, and the deduction balance due to the employer under the contract.

And if the contractor did not provide the "certificate of final account" pursuant to the provisions of paragraph (14-11) and the letter of release of the final account pursuant to the provisions of paragraph (14-12), the engineer shall request him to do so. And if the contractor failed in providing the certificate of final account within a period of (28) day, then the engineer may issue the certificate of final account in the value he estimates equitably that it is payable.

#### **14-14 End of employer's responsibility:**

The employer shall not be responsible to the contractor for any matter or something resulting from this contract (or in connection thereto), or the implementation of the works, only if the contractor files a claim for an amount explicitly:

- a) Within the "statement of final account" ; and
- b) Within the "statement of final advance payment" described in paragraph (14-10), except the matters or things emerged after the issuance of the "initial acceptance certificate of the works".

In any case, what is contained in this "paragraph" shall not limit the employer's responsibility under his obligations to compensation, or the responsibility of the employer in any of the cases of fraud or willful default, or indifferent behavior from his side.

#### **14-15 Payment Currencies:**

The "contract amount" shall be paid in the currency or currencies specified in the table of payments currencies. Unless otherwise provided in the special conditions, if the payment will be in more than one currency, then payment shall be made as follows:

- a) If "approved contract amount " is specified in local currency only:
  1. The percentages or the amounts of the local currency and the foreign currency and the fixed exchange rates that shall be used in the calculating the payments, as specified in the tender attachment, except if the parties agreed otherwise;
  2. Payment and discount concerning the reserve amounts shall be made pursuant to the provisions of paragraph (13-5), and prices amendments due to legislations pursuant to the provisions of paragraph (13-7), in the currencies and percentages applicable; and
  3. As for payments and other deductions referred to in items (14-3 - a, b, c, d), shall be paid by currencies and percentages specified in item (a - 1) above.
- b) Payment for fines specified in the contract data, shall be made by currencies and percentages specified in the table of payment currencies;
- c) As for other payments paid by the contractor to the employer, they shall be paid by the currency in which the amounts were disbursed with the knowledge of the employer, or any other currency to be agreed upon between the two parties;
- d) If the amount payable to the employer from the contractor in specified currency exceeds the amount payable by the employer to the contractor in that currency, the employer may deduct the balance of this amount from the amounts accrued to the contractor in other currencies; and
- e) If the currency exchange rate is not specified in the table of currency payments, then the currency exchange rates that prevailed at the Basic date as decided by the central bank in the country (country of implementation) shall be relied on.



## Article Fifteen: Contract Termination by Employer

### 15-1 Notification of Correction:

If the contractor failed in performing any obligation under the contract, the employer, after giving written notice requesting to him to correct this failure and remedy it within a period of (15) days, has the right to lay the hand on the site and works and the contractor shall out of them if his request of correction of this failure was not responded to.

### 15-2 Contract Termination by Employer

First: The employer is entitled to withdraw the work in the following cases without referring to the court:

- a) If the contractor failed in providing good performance guarantee under paragraph (4-2) or to respond to notice of correction as mentioned in paragraph (15- 1)
- b) If the (contractor) goes bankrupt or announce his Insolvency.
- c) If the contractor submits a request for bankruptcy or insolvency. If the contractor failed without a reasonable cause to continue the work in accordance with the provisions of "Article Eight";
- d) If a decision is issued by the competent court to place the (contractor's) funds under the control of bankruptcy trustee (sindiak).
- e) If the contractor makes a reconciliation that preserves him from bankruptcy or waives his rights to his creditors.
- f) If the contractor agrees to implement the contract under the supervision of the control board of his creditors
- g) If the contractor is a company that has announced liquidation, excluding the optional liquidation for the purpose of merger or reformation.
- h) if the contractor waives the contract.
- I) If the contractor awards parts of the works to subcontractor without obtaining the approval of the employer.
- J) If the funds of the contractor are seized by a court of competency and this seizure may lead the contractor unable to fulfill his obligations.
- K) If the contractor offered or presented to any person (directly or indirectly) a bribe, gift or bonus or commission or a financial donation as a induction or a reward for:
  - 1) Act or omission (performance or non-performance) of work related to the contract; and
  - 2) Show favoritism or lack thereof in favor of or against the interests of any person related to the contract, or if he promised any of contractor's personnel or his agents or sub-contractors or promised to give any bribe (directly or indirectly) to any person or bonus as described in paragraph (f), but offer any legal incentives and rewards to contractor's personnel shall not require the termination of the contract.
- L) If the delay percentage of work progress, in any time during the period of works execution, is more than what is stipulated in the special conditions.
- M) If the engineer approved in writing to the employer that the following cases are realized:
  - That the contractor has waived the contract refrained from signing the contract text in spite of his commencement of work.
  - That the contractor has failed, without an acceptable excuse, to continue the works or the work progress is stopped for a period of (30) thirty days after receiving a written notice from the engineer that he must continue the works.
  - That the contractor fails in removing the materials from the site or works demolition or replacing them within thirty days after receiving a written notice from the engineer that it has been decided to refuse the mentioned materials and works according to the provisions of contract.

- That the contractor has not implemented the works in accordance with the contract or has intentionally negligent and careless in fulfilling his obligations according to the contract.
- That the contractor has contracted with a subcontractor concerning any part of the contract in form that harm the quality of work or violate the instructions of the engineer.
- If it is clear to the employer that the contractor has practiced an administrative corruption, fraudulent, collusion, oppression or obstruction, etc. shown in the Para (15/6) below.

In any of these cases or circumstances, the employer may, after informing the Contractor in writing (warning him) for a period of 15 days, withdraw the work and keep the contractor out of the site.

The choice of the employer to withdraw the work should not affect any other rights of the employer realized to him under the contract, or otherwise.

The Contractor shall, in such a case, leave the site and delivers the engineer the required implementation supplies and all "contractor's documents" and any design documents prepared by the contractor or have been prepared in his favor.

However, the contractor shall do his utmost to implement immediately any reasonable instructions included in the notice which is sent by the employer, in relation to:

1. Waiver any subcontracting
2. Save the lives or properties or for works safety.

After work withdrawal, the employer is entitled to complete the works and / or use any other institutions to complete it. Then the employer and these institutions may use any of contractor's supplies, contractor's documents, and other designs documents prepared by the contractor, or those that have been prepared for his account. Employer shall then, give notice to that contractor's equipment or temporary works will be released to the contractor at the site or adjacent to it, and the contractor shall immediately remove them on his responsibility and expense. only if it is found that the contractor has not to date paid any dues to the employer owed by him, the employer may sell the implementation supplies to collect his entitlements, and if a balance remained from the sale proceeds after the recovery of dues, then such balance shall be paid to the contractor.

**Second:** The employer, when the contractor violates the execution of contract works and the work reaches the final stages and the contracting party has the ability to execute the other works, then the contracting party has the right to form a speedup committee that undertakes the completion of works according to the conditions and procedures stated in the contracts guide in this regard.

### **15-3 Assessment on the Date Contract Termination:**

The engineer - and as soon as practicable - after the notice of termination of the contract has become effective under the provisions of paragraph (15-2), shall agree pursuant to the provisions of paragraph (3-5) on the value of the works and implementation requirements and contractor's documents and any other amounts accruing to the contractor in exchange for works performed under the contract, or make estimates about them.

### **15-4 Payment after Contract Termination:**

The employer may, after the notice of termination of the contract has become effective under paragraph (15-2), carry out the following:

- a) Proceed with the procedures related to his claims according to the provisions of paragraph (2-5).
- b) Stop the payment of any amounts to the contractor until the verification of the costs of works implementation, their completion and repair any defects therein, and determine the delay penalties accruing on the contractor (if any), and any other costs incurred by the employer.
- c) Deduct any losses and damages incurred by the employer and any additional costs paid up to the completion of the works of from Contractor's account, after calculating any amounts accruing to the contractor for termination of the contract under paragraph (15-3), and after the recovery of such losses, damages, additional costs, the employer shall pay any remaining balance to the contractor.

## 15-5 Employer's Right to Contract Termination

First: the employer has the right to terminate the contract in the following cases:

- i- The employer has the right to terminate the contract in any time for the public interest, whereby he issues a warning concerning that to the contractor, and the termination shall be considered valid after the pass of (28) days after the contractor receives the mentioned warning or from the date of returning the good performance guarantee to him by the employer, whichever is later to the public interest in accordance with the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it.
- ii- If the contractor fails in completing a large part of the contract for a period more than (90) ninety days for reasons beyond his will, in accordance with the conditions and procedures stated in the contracts guide in the regard.
- iii- If the execution of the contracting obligation becomes impossible and both parties agreed to termination.

Second: the employer has no right to terminate the contract in accordance with this paragraph, in order to execute the works by himself or to arrange to be executed by another contractor, to avoid the termination of contract by the contractor in accordance with the Para (16/2) (Termination by Contractor)

Third: after this termination, the contractor has to stop the work and remove its equipment in accordance with provisions of Para (16/3) and then accounts will be settled by applying the provisions of Para (16/4) (Payment on Contract Termination).

## 15-6 Fraud and Corruption Practices:

If it became clear to the employer that the contractor exercises any of the administrative corruption, fraud or collusion or coercion practices or hindrance during the competition for the contract or its implementation, then the employer shall be entitled, and during the

14 days after the notice to the contractor thereby, to terminate the contract and to remove him out of the site and the application of the provisions of Article Fifteen as if the removal has been done under paragraph (15-2) (termination by the employer).

And if it became clear that any of the contractor's personnel involved in the administrative corruption, fraud or collusion or coercion, or hindrance practices through the implementation of works, then this employee shall be removed out of the site in accordance with the provisions of paragraph 9-6 (contractor's personnel).

The employer shall adopt the following definitions for this purpose:

1. "Corrupt practices" shall mean provide or give or receive or solicitation of, directly or indirectly, anything of value to influence the work of an official in a position of public responsibility during the supply process or contract implementation;
2. "Fraudulent practices" shall mean any misrepresentation or deletion of any facts in order to influence the supply process or contract implementation;
3. "Collusion practices" shall mean any planning or coordination between two or more Bidders, with or without the knowledge of the employer in order to set fake and uncompetitive prices;
4. "Coercive practices" shall mean harm or threat to harm, directly or indirectly, the persons or their properties to influence their participation on the supply process or to influence the contract implementation;
5. "Hindrance practices" and shall mean the following:

**First** - The deliberate destruction or forgery or change in documents or withholding evidence necessary for investigation or give false testimony to investigators to hinder the investigation by the employer concerning administrative corruption practices or fraud or collusion or coercive practices or threat or harassment or obstruction of any party and prevent him from providing any information relating to the investigation or to prevent him from pursuing the investigation; and

**Second** – Practices that hinder the employer from pursuing the audit and review procedures based on provisions of paragraph (1-15) of the General Conditions of the contract.

## **Article Sixteen: Work Suspension and Contract Termination by Contractor**

### **16-1 Contractor's Right to Suspend the Work:**

If the engineer did not approve any interim payment certificate under the provisions of paragraph (14-6), or if the employer has failed to secure the financial arrangements necessary to the contract under paragraph (2-4), or if the employer did not comply with the dates of payments due to the contractor pursuant to paragraph (14-7), then the contractor may, upon notice in a period no later than (21) days to the employer, suspend the work (or to slow down the implementation process) until the contractor received the advances, or a payment is made to him, as the case may be and according to what is contained in the notice.

This procedure by the contractor, will not affect his right to collect the expenses that might be realized to him under the provisions of paragraph (14-8), nor to his right to terminate the contract pursuant to paragraph (16-2).

If contractor subsequently received notice of advances or installment due to him before he directed the notice of **termination**, he shall resume normal work as soon as practicable.

But if the contractor incurred a delay in the completion period and / or cost as a result of suspension of work (or slowing down the implementation process) under the provisions of this "paragraph", he shall give notice to the engineer in this regard, to assess his requirements on them, taking into account the provisions of paragraph (20-1) concerning

- a) The extension of completion period due to this delay, if the completion is delayed or will be delayed under the provisions of paragraph (8-4) ; and
- b) Any such cost with profit margin to be added to the contract amount.

And after the engineer receives such notification, he shall proceed with the procedures under the provisions of paragraph (3-5) to agree on, or conduct estimates on these matters.

### **16-2 Contract Termination by Contractor:**

Contractor is entitled to terminate the contract in the following cases:

- a) If the contractor did not receive reasonable proof on employer securing the necessary financial arrangements for the contract under paragraph (4-2) after 42 days of providing notice to the employer pursuant to paragraph (16-1) (Right of the contractor to suspend work) ;
- b) If the engineer failed to issue an interim payment certificate within (56) days after the date of his receipt statement of such payment with the supported data;
- c) If the contractor did not receive any amount due to be paid to him by the interim payment certificate within (42) days of the expiry of the deadline under which the employer shall make payment under the provisions of paragraph (14-7) (excluding deductions realized regarding the employer claims under paragraph (2-5));
- d) If the employer breached substantially in the performance of his obligations under the contract in a manner that may cause adverse material impact on the economic balance of the contract and / or the ability of the contractor to perform the contract;
- e) If the employer breached the obligation of the provisions of paragraph (1-6) related to the contract agreement or paragraph (1-7) related to the waiver;
- f) If a prolonged suspension of work occurred affecting the implementation of the entire works as stipulated in paragraph (8-11);
- g) The employer has become bankrupt or insolvent or placed under liquidation, or lost liquidity, or issued a court order to transfer his assets to a receiver or that he had held a financial settlement with his creditors or continued in the performance

of the work under the supervision of a receiver or trustee or manager for the benefit of his creditors, or any incident or activity that has the same effect occurred (under the laws applicable) ; and

- h) Or in the case of non-receipt of engineer's notice by the contractor by agreement of the parties in achieving the conditions of proceeding with the works under paragraph (8-1) (proceed with the works).

In any of these incidents or circumstances, the contractor may, after notice to the employer in writing in a period of (14) day, terminate the contract, but the contractor may, by notice, terminate the contract immediately if any of the cases (f) or (g) above occurred.

The choice of the contractor to terminate the contract shall not prejudice any other rights realized to him under the contract or for other reasons.

### **16-3 Stoppage of Work and Removal of Contractor's Equipment:**

After any of the notices concerning the termination of the contract by the employer in order to serve his interests under the provisions of paragraph (15-5), or the termination of the contract by the contractor under the provisions of paragraph (16-2), or optional terminations resulting from the force majeure under the provisions of paragraph (19-6), shall take effect, the contractor shall proceed immediately with the following:

- a) Stop the implementation of any work, only if instruction has been issued for the implementation of such work by the engineer for the purpose of protecting persons or property or for the safety of the works;
- b) Delivery of contractor's documents (documents pertaining to the contract) and mechanical supplies, materials and other works that has been paid for him; and
- c) Remove all other implementation requirements from the site, except as required for safety matters and to leave the site.

### **16-4 Payment Upon Contract Termination:**

Employer shall, after the notice to terminate the contract under paragraph (16-2) has become effective, carry out the following:

- a) Return the **good** performance guarantee to the contractor;
- b) Pay the contractor's dues according the provisions of paragraph (19-6);
- c) Pay the amount arising from any damage or another loss incurred by the contractor as a result of such termination.

## **Article Seventeen: Risks and Responsibility**

### **17-1 Penalties:**

Contractor shall indemnify and protect both the employer and his personnel and their agents against all claims, damages, burdens and expenses (including litigation's fees and expenses) in connection with the following:

- a) Bodily injury or sickness or illness or death caused to any person whatsoever if it was arising out of or during or due to contractor's designs (if any), or for the implementation of works, their completion and repair any defects therein, unless they were attributed to the negligence or willful act or rescind the contract by the employer or his personnel or any of their agents; and
- b) Damage or loss to real estate or personal property (with the exception of works) to the extent to which this damage or loss:
  - 1. Resulted from or during or due to contractor's designs (if any) or the implementation and completion of works and repair any defects therein; and
  - 2. Unless and to the extent that is attributable to any negligence or willful act or rescind of the contract by the employer or his personnel and any of their agents or any person employed by any of them directly or indirectly.

Contractor shall indemnify and protect both the employer and his personnel and their agents against all claims or damages or loss or expenses (including litigation's fees and expenses) in connection with the following:

- a) Bodily injury or sickness or illness or death attributed to any negligence or willful act or rescind of the contract by the employer or his personnel and any of their agents; and
- b) Any other matters where the responsibility for them excluded from insurance coverage, mentioned it in items (d -1.2, 3) of paragraph (18-3).

### **17-2 Contractor's Care of Works:**

The contractor shall be fully responsible for care of the works and implementation supplies starting from the date of commencement and until the issuance of the " initial acceptance certificate of the works " (or shall be deemed to have been issued) under paragraph (10-1), where this responsibility is passed on to the employer, and concept this applies to any section or part of the works where the "initial acceptance certificate of the works" have been issued, " (or shall be deemed to have been issued) in respect thereof.

After the passing of the responsibility to the employer accordingly, the contractor shall still remain responsible for the care of any remaining work at the date specified in the "initial acceptance certificate of the works" till the completion of the remaining works.

If any damage or loss incurred to the works or implementation supplies or contractor's documents during the contractor's responsibility of care, for any reason whatsoever (except the risks stated in paragraph 17-3 later), the contractor shall repair (correct) such loss or damage on his own account and responsibility, till the works, implementation supplies and contractor's documents shall be in conformity to the contract.

The contractor shall remain responsible for any damage or loss that may result from the actions of the contractor after the issuance of the initial acceptance certificate of the works, as well as any damages or losses that might occur after issuing the initial acceptance certificate of the works, but it is a result of a previous incident the contractor was responsible for it.

### **17-3 Employer's Risks (excluded risks):**

The risks referred to in paragraph (17-4) subsequently listed are those that have a direct impact on the implementation of works:

- a) War or hostilities (whether war was declared or not), or invasion or the acts of foreign aggression;
- b) Insurgency or acts of terrorism or sabotage from people who are not contractor's personnel and the revolution or rebellion or seize power by force, or the civil war in the country;

- c) Strikes or riots or disorderly movements within the country of people who are not contractor's personnel;
- d) Ordnance, explosive substances or ion radiation or nuclear radiation pollution within the country, with the exception of what results from the use of the contractor for such ammunition or explosive substances or radiation;
- e) Pressure waves caused by aircraft and air means of transport surging speed of sound or at supersonic speed.
- f) The contractor use or occupancy of any part of the permanent works, except what is stipulated in the contract;
- g) Designing any part of the works that has been prepared by employer's personnel or by others who is under the contractor's responsibility; and
- h) Any operation of the forces of nature, which is considered unforeseen, or which cannot be expected to take appropriate preventive measures against it from an experienced contractor.

#### **17-4 Consequences of Employer's Risks:**

If and to the extent that results from any of the risks listed in paragraph (17-3) above any loss or damage to the works or implementation supplies or contractor's documents, the contractor shall give notice to the engineer immediately, and repair the damage or loss to the extent required by the engineer.

If the contractor incurred delays in the implementation and / or a cost due to the repair of such damages or losses, he shall send another notice to the engineer to assess his requirements in this regard, taking into account the provisions of paragraph (20-1), concerning:

- a) Extension of the completion period due to this delay, if the completion is delayed or will be delayed, under the provisions of paragraph (8-4) ; and
- b) Any such cost, to be added to the contract amount. With calculating a profit margin for the cases (f, g) mentioned in paragraph (17-3) above shall be added to the cost.

The contractor shall, after receiving the subsequent notice, act according to the paragraph (3-5) in agreement thereon or to make estimates in respect thereto.

#### **17-5 Intellectual and Industrial Property Rights:**

The term "infringement" in this paragraph shall mean: any infringement (or claimed infringement) on any rights such as patented invention or registered designs, copyrights or trademarks or trade names or trade secrets or other intellectual or industrial property right relating to work, as the term " claim " shall mean any claim (or proceedings of claim) by claiming the occurrence of infringement.

If a party did not send any notice to the other party about any claim within (28) days from the date of receipt of the claim, the first party (in this paragraph) shall be considered that he has waived his right to compensation under the provisions of this "paragraph".

Employer shall compensate the contractor and protect him from any claim of infringement, if the claim:

- a) Has happened as a result of the contractor's compliance with the provisions of the contract, which he cannot avoid ; or
- b) Resulted from the use of the employer for any works:
  - 1. For a purpose other than intended or which can be deduced from the contract, reasonably; or



2. Connected to anything the contractor did not supply, unless such use is known to the contractor before the "Basic Date," or stipulated in the contract.

The Contractor shall indemnify and protect the employer against any other claims that may arise out of or in connection to:

1. The design or manufacture or sell or import any of the implementation supplies ;  
and
2. Any design for which the contractor is responsible for.

If any party entitled compensation under the provisions of this "paragraph," the indemnifying party shall negotiate on his account to settle the claim through judicial or arbitral proceedings that may ensue. And the other party shall assist in challenging the dispute at the request and account of the indemnifying party. And the other party and his personnel shall refrain from providing any acknowledgment that might be unfair against the indemnifying party, only if the indemnifying party has failed to hold negotiation or litigation or arbitration at the request of the other party.

#### **17-6 Limitations on Responsibility:**

No party shall be responsible for the other party for the loss of use of any works, or the loss of profit of any contract, or loss of opportunity to win other contracts, or for any indirect or consequential loss or damage that may cause the other party due to the contract, with the exception of what has been stipulated in the delay penalties under paragraph (7-8) and the cost of repairing defects under paragraph (11-2), and payment after contract termination under paragraph (15-4), and payment upon completed under paragraph (16-4) and penalties (fines) under paragraph (17-1) and consequences of employer's risks under clause (17-4-b) and intellectual and industrial property rights under paragraph (17-5).

The overall responsibility borne by the contractor to the employer under the contract or in what is connected to it, shall not exceed the amount resulting from the proceeds of multiplying the coefficient (factor) that is more or less than the amount acceptable to the contract as specified in the contract data, or the amount acceptable to the contract in the absence of reference to such coefficient (factor) in the contract data except the following:

- Supply with electricity and water in accordance with paragraph (4-19).
- Employer's equipment and materials provided by him for free under paragraph (4-20).
- Penalties (fines), under paragraph (17-1).
- Intellectual and industrial property rights, under paragraph (17-5).

The provisions of this "clause shall not limit" the responsibility of the party in breach of any cases of fraud or willful default or misconduct, carelessness of his part.

#### **17-7 Use of offices and Residences of the employer's:**

The contractor shall take full responsibility for the care of department headquarters and residence of employer's representatives at the sites (if any) and as defined in the specification, starting from the date of handover the site to the contractor until the date of the evacuation due to the evacuation of works (if the evacuation is at a later date to the date specified in the initial acceptance certificate of the works).

If any loss or damage occurred at the above-mentioned headquarters during the validity of the contractor's liability for them that results from any reason whatsoever, but it is not due to the employer, the contractor shall at its own expense repair the damage and replacing missing parts, according to the engineer's requirements



## Article Eighteen: Insurance

### 18-1 General Requirements for Insurance:

The term "insurer party" in "this paragraph" - for each type of insurance, shall mean that party responsible for obtaining and maintaining the insurance provided for in any of the "items" of this article.

Where the contractor shall be the "insurer party" he shall procure insurance with the insurance entities and in insurance conditions acceptable to the employer, so that the conditions are compatible with any conditions the parties agreed before the date of "Award Letter", because these conditions agreed upon have the precedence over the provisions of this "article". Where the employer shall be the "insurer party" he shall procure insurance with the insurance entities and in insurance conditions acceptable to the contractor, so that the conditions are compatible with any conditions the parties agreed before the date of Award Letter, and these conditions agreed upon shall have the precedence over the conditions mentioned in this article.

And if it is required in the insurance policy to provide compensation for joint insurance (i.e., for both parties combined), then insurance cover shall apply for each insured party independently as though a single document has been issued to him. If the insurance policy stated to provide compensation "for additional participants" meaning any other people other than the non-insured parties under the provisions of this "article" then:

1. The contractor shall act on behalf of these additional subscribers with the exception the employer's personnel, where the employer shall be deemed on their representative;
2. Those additional subscribers shall not be authorized to receive payments directly from the insurance body or to have any direct contact with that insurance body; and
3. Party insurer to ask all these additional subscribers to comply with the conditions contained in the insurance policy.

And it is required in each insurance policy against loss or damage, that its compensation to be paid in currencies necessary to compensate for the loss and damage, and that the payments offered by the insurance bodies to be used for the purpose of compensation for the loss or damage.

The "insurer party" concerned shall provide the other party, during the periods specified in **contract data** (or which their start shall be calculated from commencement date), the following;

- a) A proof that the required insurance documents has been obtained under this article; and
- b) Copies of insurance documents related to insurance on works and contractor's equipment under paragraph (18-2) and insurance against bodily injury and damage to properties under paragraph (18-3).

And the "insurer party" shall, on each premium payment, provide copies of payment receipts to the other party, and when submitting documents or payments receipts to the other party, he shall notify the engineer of this.

Each party shall adhere to the conditions listed in any of the insurance documents. And the "insurer party" shall notify the insurance authority of any changes occur in the works and to ensure the sustainability of the validity of the insurance documents under the provisions of this article.

No party shall have the right to make any fundamental amendment on the conditions of any insurance documents without obtaining the prior approval of the other party. And if the insurance authority made (or tries to make) any amendment on the insurance conditions, the party first notified by the insurance authority of change order shall notify the other party of this matter immediately.

If the "insurer party" delayed in obtaining and maintain any insurances required of him according to the contract terms, or failed in providing proof acceptable and copies of documents according to the requirement of this "paragraph", the other party may: (by his choice and without prejudice any of his rights or procedures) obtain insurance documents with the required coverage, and to pay its premiums, and the insured party shall pay the value of these premiums to the other party, and the contract amount shall be amended in the amount of the sums paid.

Any provision of this article shall not form a limitation of any of the duties or obligations or responsibilities of the contractor or the employer under any other provisions in the contract or other reasons. Both the contractor and / or the employer shall bear any amounts not covered by insurance or not been collected from the insurance authorities each according to what is required of him under such duties or obligations or responsibilities. Except the case where the "insurer party" fails to obtain and maintain insurance policy that can be issued, and be required under the provisions of the contract, and the other party did not approve its cancellation and he in return did not conclude insurances to cover such infringement, then any amounts that could have been recovered from insurance against obtaining such document (policy), shall be borne by the "insurer party".

The payments any party pays to the other, shall be subject to the provisions of article (2-5) related to employer's requirements or paragraph (20-1) related to contractor's requirements, as applicable.

The contractor shall have the right to carry out insurance related to the contract (including but not limited to the insurance referred to in article eighteen with insurance companies in any eligible country).

## **18-2 Insurance on Works and Contractor's Equipment:**

The "insurer party" shall procure insurance on the works, mechanical supplies, materials and contractor's documents in an amount no less than its replacement value in full, plus the cost of demolition and transportation of debris and fees of professional wages and profit. This insurance shall enter into force as of the date in which a proof is required to be presented under item (18-1-a) and till the date of issuance of the "initial acceptance certificate of the works".

And the "insurer party" shall maintain the sustainability of the insurance cover till the date of issuance of the "initial acceptance certificate of the works", against any loss or damage that the contractor is responsible for any causes precede the issuance of the "initial acceptance certificate of the works" and against any loss or damage might be caused by the contractor during his conduct of the defects repair process pursuant to the provisions of article eleven.

The 'insurer party' shall insure the contractor's equipment in an amount no less than its full replacement value including the cost of delivery to the site, taking into account that this insurance shall be valid for all piece of equipment during its transportation to the site and till no longer needed as contractor's equipment.

Unless provided otherwise in the special conditions, the insurance under this paragraph shall consider the following:

- a) The insurance to be effective and sustainable by the contractor as an insurer party;
- b) The insurance to be in the name of the two parties jointly, and who is entitled jointly to obtain insurance amounts from insurance bodies, and then they are saved or allocated to the party who will bear the cost of repairing the damage or loss;
- c) To cover all damage or loss resulting from any case not mentioned in the employer's risks stated in paragraph (17-3).
- d) Also to cover any damage or loss that might be incurred by any part of the works attributed to the employer use or his occupation of other part of the works, and all damage or loss related to the risks listed in items (17-3 c, g, h) of the employer's risks, with the exception of the risk cases that cannot be insured in reasonable commercial conditions, with a discount amount for each incident that shall not exceed the amount specified in the **contract data**, (and if an amount is not specified in the contract data, this paragraph (d) shall not apply) ; and
- e) However, insure for damage and loss or replacement may be excepted for the following reasons:

1. Any part of the works that is in defective condition due to a defect in design, materials or manufacturing (but he shall maintain the insurance cover for

- any other parts damaged as a result of this situation directly, but not for the reasons set forth in item (2) later);
- 2. Any part of the works suffered a damage or loss due to re-construction other parts of the works, if this other part is in a defective condition due to a defect in design, materials or manufacturing;
- 3. Any part of the works had been delivered to the employer, except to the extent that the contractor shall be responsible for coverage of damage or loss; and
- 4. Implementation supplies when they are not available in the country, taking into account the provisions of paragraph (14-5) with respect to the mechanical supplies and materials intended to be used in the works.

If it is found out - after one year of the "Basic Date" - that the insurance cover described in paragraph (d) above is not available on reasonable commercial basis, the contractor shall "as an insurer party" to give notice to the employer on the subject, accompanied by supporting details. And the employer:

- 1. Entitled – taking into account the provisions of paragraph (2-5) – to obtain an amount from the contractor equal to this reasonable commercial insurance cover that the contractor expected to be paid for such cover; and
- 2. Is considered, unless he obtains insurance coverage at a reasonable commercial basis, has approved the cancellation of the insurance under the provisions of paragraph (18-1).

### **18-3 Insurance Against Personal Injury and Damage to Property:**

The "insurer party" shall make liability insurance of each of the parties for any death or bodily injury or any loss or damage can be caused to any material possessions (except for works and contractor's equipment insured under the provisions of paragraph (18-2), or by any persons insured under the provisions of paragraph (18-4), for what can result from the implementation operations carried out by the contractor before the issuance of the "final acceptance certificate of the works".

The value of this insurance for each accident shall not be less than the amount specified in the **contract data**, without a limit to the number of occurrences, (and if such any amount is not mentioned in this regard in the tender attachment, the provisions of this paragraph shall not apply).

Unless otherwise provided in the special conditions, the following shall be considered for Insurance contained in this "paragraph":

- a) To be obtained and maintained by the contractor as an "insurer party";
- b) The insurance shall be in the name of both parties jointly;
- c) Its range to be expanded to include liability against loss and damage incurred on the employer's property, which may result from contractor's implementation of the contract works, (except for the things that is insured under paragraph (18-2) and the arising from the contractor's implementation of the contract.
- d) In spite of that, liability may be exclude to the extent that might arise with it:
  - 1. Employer's right to implement permanent works above or over or under or through any land, and he occupy this land for permanent works;
  - 2. The damage that is considered an unavoidable result of contractor's obligations to implement works and repair any defects therein; and
  - 3. Any case included in the employer's risk in paragraph (17-3) unless the insurance cover was available to it under commercially reasonable terms.

#### **18-4 Insurance on Contractor's Personnel:**

The Contractor shall hold and maintain in force liability insurance against claims, damages, losses and expenses (including litigation's fees and expenses) that may result from disease or illness or death of any person is used by the contractor or any of his employees.

The insurance shall include the employer and engineer for any claims for penalties (fines), loss, damage and any amounts due to injury, illness or disease or death of any of contractor's employees, except that this insurance may not include the loss and penalties (fines) resulting from any act or negligence of the employer or his representatives.

This insurance shall be sustained effectively and continuously for the time period in which these people are involved in the implementation of works, as for any subcontractor's personnel, the subcontractor may procure insurance for them, but the contractor remains responsible for compliance with the provisions of this Article

## **Article Nineteen: Force Majeure**

Unless otherwise provided in the law applicable on the contract, the following shall apply:

### **19-1 Definition of Force Majeure:**

The term "force majeure" shall mean in this "article" any occurrence or exceptional circumstance characterized by:

- a) It is beyond the control of any party;
- b) That party was not able to take guard against it reasonably before the conclusion of the contract;
- c) That party was not able to avoid or avert it reasonably when it occurs ; and d) It does not substantially attributable to the other party.

The force majeure may include, but not limited to any of the following facts types or exceptional circumstances, as long as all of the conditions (a, b, c, d) listed above have been achieved:

1. War or hostilities (whether war was declared or not), or invasion or acts of foreign enemies;
2. Insurgency or acts of terrorism or sabotage from people who are not contractor's personnel and the revolution or rebellion or seize power by force, or civil war;
3. Strikes or riots or disorderly movements within the country of people who are not contractor's personnel;
4. Ordnance, explosive substances or ion radiation or nuclear radiation pollution within the country, with the exception of what results from the use of the contractor for such ammunition or explosive substances or radiation ; and
5. Natural disasters such as earthquakes and hurricanes and heavy storms or volcanic activity.

### **19-2 Notification of Force Majeure:**

If the force majeure was a cause that prevents (or will prevent) party's performance of any of his contractual obligations, he shall notify the other party of the event or circumstance which constitutes a force majeure specifying in this notice the obligations which are (or will be) impossible for him to perform. Notice shall be given within (14) day after the date in which the party become aware (or supposed to be aware) of such event or circumstance which constitutes a force majeure. Thus, the party after issuance the notice shall be excused from performing his obligations mentioned as long as the force majeure event prevents this.

Notwithstanding any provision in this article, the force majeure event shall not apply on any of the parties' obligations to pay the installments to the other party under the contract

### **19-3 Duty to Reduce Delay:**

Each Party shall make every reasonable effort, at all times, to reduce delay in performing his obligations under the contract, as a result of force majeure. And each party shall also know when the other party ceased to be affected by the force majeure event.

### **19-4 Consequences of Force Majeure:**

If contractor have been prevented from performing any of his fundamental obligations under the contract as a result of force majeure and a notice has been sent in this regard pursuant to paragraph (19-2) and he incurred as result thereon delays in the implementation period and / or the cost, the contractor shall, taking into account the provisions of paragraph (20-1), be entitled to claim the following:

- a) Extension of completion period due to this delay, if the completion is delayed or will be delayed, under the provisions of paragraph (8-4); and
- b) Recover any such cost inclusive the of cost repair or re-implementation of works and / or replace the goods affected or damaged due to any force majeure to the extent that cannot be compensated through insurance policy referred to in paragraph (18-2), if the incident or circumstance of a kind described in any of items (1, 2, 3, 4) of paragraph (19-1), and whether any of the events described in items (2, 3, 4) occurred in the works.

he engineer shall, after receiving this notice, proceed under paragraph (3-5), to agree or prepare his estimates of the cost mentioned.

#### **19-5 Force Majeure Affecting Subcontractor:**

If any subcontractor is entitled under any contract or agreement of works to any exemption as a result of force majeure under additional conditions or broader conditions than those specified in this article, those events or additional conditions or broader conditions of force majeure shall not exempt the contractor in case of non-performance and shall not conferred any exempt under the provisions of this Article.

#### **19-6 Optional Termination of Contract, Payment and Discharge of Performance**

##### **Responsibility:**

If the performance in the implementation of all the works substantially becomes impossible for (84) days continuously due to force majeure, which a notice thereon was sent under paragraph (19-2) or sequential periods exceeding in total more than (140) days due to the same force majeure that the notice has been sent thereon, then any party may send a notice to the other party to terminate the contract. In this case, the termination of the contract becomes effective after (7) days from the date of sending the notice, the contractor shall take immediate measures to stop working and remove his equipment, pursuant to the provisions of paragraph (16-3). Upon contract termination in this manner, the engineer shall proceed to make estimates of the value of the works that have been completed and issue certificate of payment that shall include the following:

- a) Amounts payable for any work has been implemented and has a specific price in the contract ;
- b) Cost of mechanical supplies and materials that have been their purchased have been confirmed and received by the contractor or those are contracted to be supplied and received: In such case, the mechanical supplies and material shall become property of the employer (and within his responsibility) once their values is paid, and the contractor shall deliver and place them at the disposal of the employer ;
- c) Costs and other financial burdens that the contractor incurred in such circumstances reasonably and necessary and as a result of his expectation of the completion of the works ;
- d) Cost of removing the temporary works and contractor's equipment from the site, and returned to his stores in the country (or to any other place, provided that it shall not exceed the cost of returned it to his country) ; and
- e) Cost of repatriation of contractor's personnel and his workers who he used to carry out works on full-time bases, upon the expiry of this contract.

#### **19-7 Discharge of Performance Responsibility by Law:**

Notwithstanding any other provision in this article, if any event or circumstance beyond the control of the two teams (including force majeure, but not limited to it) arise, and render the fulfillment of one or both parties contractual obligations impossible or contrary to law, or leads under the law govern the contract to exempt the parties from continuing to perform the contract.

Then after notice from either party to the other party of that circumstance or event:

- a) Both parties shall be exempted to continue in the performance, but without prejudice to the rights of any of them in respect of any previous breach of contract.
- b) The amount, which entails that the employer pay to the contractor, is the same as what is payable under the provisions of paragraph (19-6) above, as if the contract had been terminated under the paragraph mentioned.

## **Article Twenty: Claims, Disputes and Arbitration**

### **20-1 Contractor's Claims:**

If the Contractor considers himself entitled to an extension in the "completion period" and / or any additional payment under any "article" of these conditions, or for other reasons related to the contract, he shall give notice to the engineer stating the incident or circumstance which led to this claim. And he shall send this notice as soon as practicable, within a period not exceeding (28) day from the date the contractor is aware or should have be aware of that incident or circumstance.

If the contractor failed to send notification during the (28) day period, the completion period shall not be extended and the contractor shall not be entitled to obtain any additional payment, and so the employer shall be deemed that he is discharge from liability in respect to such claim. Otherwise, the following provisions of this "paragraph" shall apply.

The Contractor shall also send any other notices are required under the contract, and provides supporting details to the claim, and everything related to the incident or circumstance mentioned.

The contractor shall maintain updated records necessary to strengthen the claim, either on-site or in elsewhere acceptable to the engineer.

The engineer may - without being forced to acknowledge the responsibility of the employer thereon - after receiving any notice under these "paragraph", monitor record- keeping and / or to instruct the contractor to continue the setting down in writing of the updated records. The Contractor shall allow the engineer access to records and check them, and to provide him with copies thereof (if requested).

As the contractor shall send the engineer within (42) day from the date of his knowledge of the incident or circumstance that led to the claim (or the date on which he was supposed to know), or during any other period proposed by the contractor and approved by the engineer, a detailed claim adequately and inclusive of details supporting the grounds of the claim and period extension and / or additional payment claimed. But if the event or circumstance that lead to this claim is of a continuous effect, then:

- a) The detailed claim which was presented shall be considered an interim claim ;
- b) The contractor shall continue to send other interim claims per month, indicating in each of them the period of accumulated delay and / or the amount claimed, and other supporting details as required by the engineer reasonably ; and
- c) The contractor shall send his claims during the final (28) day after the date of expiry of the impact of the consequences of the incident or circumstance, or during any other period proposed by the contractor and approved by the engineer.

The engineer shall, within (42) day from the date of receipt of a claim, or any other supporting details of a previous claim - or during any period proposed by the engineer and approved by the contractor - evaluate the claim and respond to it either by approval or disapproval with stating his detailed comments on them, and he may also ask any other details necessary. In spite of that, he shall be obliged to submit his reply on the basis of claim during the period referred to above.

The engineer shall, during the 42 days referred to above, proceed with estimates under paragraph (5-3) to determine or estimate the following:

1. Any extension in the completion period (whether before or after its expiry) pursuant to the provisions of paragraph (8-4) and / or
2. Additional payment (if any) which the contractor is entitled under the provisions of the contract.

Any payment certificate shall include all those amounts of any additional payment in which its maturity was reasonably proven under any of the relevant provisions of the contract. And until provide adequate details to substantiate the claim for the entire claim, the contractor's right in them, will be limited to that part of the claim, which was able to prove the validity of claim thereon.

If the engineer did not respond within the time limit specified in this article, any party shall have the right to consider the claim is rejected by the engineer and any of the parties is entitled to refer the claim to dispute resolution council to take the right decision pursuant to the provisions of paragraph (20-2).

The "requirements" of this paragraph shall be considered additional to those contained in any other "article" that may apply to the claim, and if the contractor failed to comply with the provisions of this "paragraph" or any other "article" in respect of any claim, it should be borne in mind the extent of the effect (if any ) of this failure on the proper investigation of the claim when assessing any extension in the " completion period" and / or any additional payment properly, unless the claim has been eliminated under this "paragraph".

## **20-2 Appointment of the Settlement of Disputes Board:**

The disputes shall be referred to the settlement of disputes council to issue an order in respect thereof according to the provisions of paragraph (20-4). And both parties shall mutually name the members of the council within the date specified in the **contract data**.

The "Council" shall consist as specified in the **contract data**, from one person or three persons with appropriate qualification (Members). And each of them shall be fluent in communications specified in the contract. And shall be an expert in methods of construction that are used in the implementation of works, and he shall have an experience in the interpretation of the contract documents, and if the number of members has not been determined agreed by the parties, the number shall be three.

If the parties have not appointed Settlement of Disputes Council before 21 days from the date specified in the **contract data**. And if the "Council" consisting of three members, each party shall name one member to obtain the approval of the other party on him, and then the two members so appointed shall propose the third member. The parties shall agree on the third member which is appointed as chairman of the council.

But if there was a list of arbitrators' nominee that is mutually agreed by both parties and referred to in the contract, the names of members shall be selected among the names contained therein, except for anyone who is unable or unwilling to accept appointment as a member of the council.

The drafting of the agreement shall be made between the parties and the sole member of the Council (the arbitrator) or each of the three members where reference shall be made to the general conditions relating to "settlement of disputes agreement" annexed as an attachment to these general conditions of the contract, with any amendments agreed upon among them.

As for the salaries of the sole member of the council or all of the three members' salaries and any other expert who the " Council" consults , it must be determined among the parties when agreeing on the terms of appointing the "members," and the parties shall pay those salaries equally.

Both parties combined may - if an agreement has been reached between them at any time - refer any matter to the "council" to express an opinion about it, but any party shall not be entitled to consult the "Council" in any matter only with the approval of the other party.

If any member of the Settlement of Disputes Council refused to work, or that he became unable to perform his duties due to death or disability or due to resignation or termination of the appointment, then a replacement shall be appointed in the same manner in which the replaced by member has been appointed or agreed upon as described in this paragraph. The appointment of any member can be terminated by the agreement of the two teams combined, but not by the employer or contractor individually. Unless otherwise agreed by the parties, the term of appointment of the "Council" (including each member therein) ends when the "Clearance Acknowledgment" mentioned in paragraph (14-12) of the General conditions become effective.

## **20-3 Failure in Agree on the Appointment of the Board:**

If any of the following cases applied specifically:



a) Both parties have not agreed on the appointment of the sole member of the council on time within the first paragraph of paragraph (20-2). (Appointment of members of Settlement of Disputes Council) ;

b) Any party failed to nominate a member of (for approval by the other party) or failed to approve the proposed member of the other party to the Settlement of Disputes Council consisting of three members of the above-mentioned date;

c) Both parties did not agreed on the appointment of the third member (Chairman) on the above-mentioned date ; or

d) Both parties did not agreed on the appointment of any alternate member within (42) day from the date of the expiry of the mission of the sole (single) members of the council, or one of the three members of the council, due to his refusal or due to death or inability to perform tasks or due to resignation or termination of appointment.

Then, the appointing authority or the person named in the **contract data**, based on the request of any of the parties or both and after the necessary consultation with both parties, shall appoint such council member. And such appointment shall be final and definitive, and both parties shall pay the fees of the authority or the person who carried out the appointment equally.

## **20-4 Decision by the Settlement of Disputes Board:**

Unless otherwise provided in the special conditions:

If a dispute of any kind arises between the parties, in connection with or arising out of the contract or the implementation of works, including any dispute about any certificate or estimates or instructions or opinion or value determination by the engineer, either party may

refer the dispute in writing to the "Council" for its consideration and decision, with sending two copies of such notice to the other party and the engineer, and to be noted that such refer of dispute shall be made in accordance with the provisions of this "paragraph."

If the "Council" consists of three members, the council shall be considered that it has received notice of referral the dispute to it in accordance with the provisions of this "paragraph" on the date the chairman receives such notice.

Both parties shall submit to the council all the additional information without delay, and to provide access to the site and appropriate facilities which may be requested by the "Council" for the purpose of enabling the council to make a decision on that dispute, presumably imply that the council will not work as an arbitral tribunal.

The " Council" shall also, within a period not exceeding (84) day from the date of receipt of the notice of referral the dispute to it, or within such other period as proposed by the council and approved by both parties, take a decision in respect thereof. And provided in this decision to be justified, and acknowledges it as being issued in accordance with the provisions of this "paragraph" and this decision shall be binding on both parties and they shall implement it unless (or until) be revised by amicable settlement or through arbitration proceedings as will be mentioned later, and had not the contract been abandoned or rescind or terminated, the contractor shall, in such a case, continue in the implementation of the works according to the provisions of the contract.

If any of the parties are not satisfied with the council's decision, he shall within (28) day after receiving the decision, give notice to the other party informing him of his dissatisfaction and his wish to resort to arbitration. And if the "Council" could not issue his decision within the period of (84) day (or as agreed otherwise) from the date of receipt of the request to refer the dispute to it, then either party may, within a period of the 28 day following the period of the 84 day elapsed, inform the other team of his dissatisfaction and his wish to resort to arbitration.

In any of these cases, the subject of dispute and the reasons for dissatisfaction shall be declared in the notification, and also noted that it has been issued under the provisions of this "paragraph". And with the exception of what will be stated later in paragraphs (20-7 and

2-8), any party may not start with the arbitration rules on the dispute, unless the notice of dissatisfaction has been issued, as specified in the "paragraph".

But if the "Council" issued its decision on any different matter between the parties, and did not receive any notice of dissatisfaction from any party within (28) days after the date of receipt of the decision, then the "Council" decision shall become final and binding on both parties.

## **20-5 Amicable Settlement**

If a notice of dissatisfaction is issued pursuant to paragraph (20-4) above, both parties shall attempt to settle the dispute amicably before start with the arbitration procedures. And Unless the Parties agree otherwise, arbitration proceedings may be commenced on

or after the fifty sixth day of the date of notice of dissatisfaction and the desire to resort to arbitration, even if the dispute is not been settled amicably.

#### **20-6 Arbitration:**

Unless otherwise provided in the special conditions and unless the dispute has been settled amicably, any dispute on Council's decision (if any) in respect thereof, which has not become final and binding, shall be settled by arbitration. And unless the parties agree otherwise:

- a) For contracts with foreign contractors, the arbitration shall be conducted under the rules and procedures of international arbitration adopted by the International arbitral tribunal specified in the **contract data**, such as those issued by the International Chamber of Commerce or UNCITRAL or Arab Arbitration Chamber for contractors;
- b) Unless specified otherwise **in the contract data**, the arbitration shall be conducted in Iraq and arbitration awards shall be subject to the arbitration rules approved for Iraqi laws;
- c) The language of communication specified under paragraph (1-4) (Law and Language) shall be adopted in the arbitration procedures; and
- d) For contracts with local contractors, the arbitration rules under the Iraqi laws shall be adopted.

Arbitral tribunal shall have full authority to detect, review and revise any certificate or estimates or instructions or opinions or evaluation, and any decision issued by the Settlement of Disputes Council with respect to the dispute.

Any of the parties shall not be limited in the proceedings before the arbitral tribunal concerning the evidences or arguments previously put forward in front of the "Council" before making its decision, or the reasons mentioned in the notice of dissatisfaction, and any decision of the "Council" shall be considered as acceptable evidence in the arbitration.

Is may be started before or after the completion of the works, and any obligations of the parties or the "Council" shall not be affected if the arbitration proceedings started during the implementation of the works.

#### **20-7 Non-Compliance with the Board's Decision:**

In the event of the failure of one of the parties to comply with the final and binding decision of the Settlement of Disputes Council, the second party shall be entitled to, without prejudice to any of his other rights, assign such non-compliance to arbitration under the provisions of Paragraph (6-20) and in such a situation the provisions of

paragraphs (20-4) (relating to the Council's decision) and (20-5) concerning amicable settlement shall not apply.

**20-8 The Expiration of the Appointment of the (Board):**

If any dispute arises between the parties in connection with the contract or as a result thereof or the implementation of the works, and there is no existence of the "Settlement of Disputes Council," whether due to the expiration of the period of its appointment, or for any other reason:

- a) Paragraph (4-20) concerning the Council's decision, and paragraph (5-20) related to amicable settlement shall not apply;
- b) The dispute may be referred directly to arbitration under the provisions of paragraph (6-20).

## **Section Eight: Special Conditions of the Contract**

The special conditions described later on are complementary to the general conditions of the contract, whenever and wherever there is a dispute, its provisions prevail over those stipulated in the general conditions of the contract.

### A- Data of the Contract

Insert the name of the project	(Insert Bid Number )	
Data	Item Number of the General Conditions of Contract	Limitations
Name and Address of Employer	1/1/2/2 and 1/3	(insert employer's name) (insert his address including Phone, Email, Website, Fax)
The engineer His Address	1/1/2/4 and 1/3	(insert name of engineer) (insert his Address, Phone, Email)
Works Completion Period	1/1/3/3	( ) days If the works were in several parts, refer to a summary schedule of completion of each part
Maintenance Period (defects repairs period)	1/1/3/7	( ) calendar days
Work Parts	1/1/5/6	If the works were in several parts, refer to the work parts schedule
Electronic Submission of the Bids	1/3/	Insert (Applicable – Not Applicable)
Governing Law of the Contract	1/4	(insert the Governing Law of the Contract)
Adopted Language in the Contract	1/4	(insert the adopted language (languages))
Communication Language	1/4	
Date of the Contract Conclusion	1/6	(insert date)
Date of the Site Delivery	2/1	The Date of site receipt shall be before the commencement date, excluding the parts

		Site forth later (if its applicable with detailed description for these parts) ----- days after the commencement date	
		Insert parts of the works	Insert date of receiving the site
Authorities and duties of the engineer	3/1 (B) (Second)	Changes that will result in increasing the accepted value of the contract, with a percentage ( %) requires to be subjected to the employer's approval	
Good Performance Guarantee	4/2	Good Performance Guarantee is a form of Bank Guarantee (insert the percentage that it represents from the accepted price value with the same currency (currencies) of accepted contract value	
Daily Working Hours	6/5	(insert daily working hours)	
Work Progress Schedule	8/3	In case the contractor fails to submit a valid work progress program, he will subject to a penalty of (insert proposed penalty)	
Delay Compensation (Delay Penalty)	8/7 and 14/15 (B)	(insert delay penalty amount per day <b>and the equation of its calculation</b> ) if the contract included delivering project parts by stages, to notice the schedule at the end of data	
Maximum Delay Penalty	7/8	-----% of final contract amount	
<b>Long Term Suspension</b>	<b>11/8</b>	<b>If the work suspension continued, in accordance with Para 8/8, for a period exceeding ( ) days the engineer is permitted to notify the contractor to resume the work</b>	

Prolonged suspension	8/11	If the work suspension according to Para (8/8) is continued for a period exceeding (    ) days, then the engineer may permit the contractor to continue the work
Reserve Amounts	13/5 (B, Second)	(in case there is an amount of the general reserve, insert its percentage of the contract amount)
Adjustments because of changes in legislations	13/7	If the work suspension continued, in accordance with Para 8/8, for a period exceeding (    ) days the engineer is permitted to notify the contractor to resume the work.
Adjustments because of changes in the Cost	13/8	The time period for the review prices (insert the proper time period to review the prices) (applicable – not applicable)
Late Advances	14/8	If the contractor received any advance payment due to him according to Para (14/7), he has the right to receive the financing expenses for any delayed amounts to be paid to him (insert applicable, not applicable)
Contract Value	14/1 (B)	Is the contract amount exempted from taxes and custom duties? (insert yes or no)
Maximum limit Advance Payment	14/2	-----% of the contract amount ( the contracting party has to consider the proportions specified in the instructions of implementing the prevailing investment budget and the procedures of the collecting these advances)
Advance Payment Refunding	14/2	(Insert the refunding date of the first installment) (Insert the refunding percentage for each installment ) (Insert the refunding date of the last installment) ( the contracting party has to consider the limits of these proportions according to the instructions of the investment budget prevailing at that time and the procedures of the collecting these advances)
Cash Deductions Percentage	14/3	-----%

Cash Deduction Limits	14/3	-----% of the amount of the accepted contract
Name of party who issued the annual deduction percentage in order to specify the amount of financing expenses for delaying in paying interim payments.	14/8	If applicable (Insert the name of the financial organization) , not applicable)
Final Advance (upon receiving the works	14/10	The contractor has to submit to the engineer within a period not exceeding ( ) days from the date he receives the preliminary acceptance certificate of the work, the statement of the final account
Payment after work withdrawal	15/4	(to consider the prevailing legislations in the payment of contractor's dues)
The right of the contractor in terminating the contract	16/2	Insert ( Applicable – not Applicable)
Maximum Responsibility borne by the contractor toward the employer	17/6	(Insert one of the two alternatives set forth later on) multiplied by (factor less or more than one) in the accepted value of the contract, or (insert a higher value for the commitment of the contractor)
Insurance Documents Submission	18/1	(Insert the period specified to submit the document



A- Insurance Confirmation B- Insurance Policies		of insurance and insurance policy. The period is between 14-28 days ----- day ----- day
Maximum insurance deductions amount of damages arising from the works of the employer to any part of the works	18/2 (D)	(insert the maximum amount of deductions)
Minimum Insurance amount for the risks of third party	18/3	(insert the insurance amount of the third party)
Term of Appointment of the Settlement of Disputes Board	20/2	If applicable insert ( ) day from the commencement date
Forming of Settlement of Disputes Board	20/2	( ) either (one member) ( ) or (three members)
Name List of adopted experts of Settlement of Disputes Board	20/2	(when the Settlement of Disputes Board consists of one member only, insert the list of adopted experts: and also if more than one member)
The party that appoints the members of Settlement of Disputes Board	20/3	(Insert the name of party resorted to nominate the experts for the Settlement of Disputes Board)
Procedural Rules for Arbitration	20/6 A	(insert the adopted rules for Arbitration)
Arbitration	20/6 B	(insert the place of Arbitration and governing law)

#### **Schedule: Summary of Parts Constituting the Works**

<b>Name of Part / Description according to Para (1/1/5/6)</b>	<b>Date of Completing the Part according to Para (1/1/3/3)</b>	<b>Delay Penalty according to Para (8/7)</b>

## **b. Special Conditions of the Contract**

### **Article 14-1 Contract Value**

#### **(Alternate text for paragraph (e))**

In addition to the provisions specified in paragraph (b), contractor's equipment with its key spare parts that are imported exclusively for the purposes of implementation of the project shall be subject to the temporary exemption from tax and customs duties when entering for the first time, provided that the contractor undertakes (provides) with the customs authorities at ports or border points a bank guarantee to guarantee export in force up to date of contract complete, plus a six-month in a value equal to the full amount of customs duties and tax payable for such equipment and their spare parts in case of contractor's failure to export them outside Iraq upon completion of the contract, and the contractor shall also submit a copy of this guarantee certified by the customs authority to the employer as soon as any of the different implementation equipment and their spare parts belonging to him enter Iraq. and the contractor shall, when re-export of any such equipment and spare parts or upon completion of the contract, provide a statement (declaration) of the value of such equipment and spare parts in its subsequent position (status) to the customs authority required to be taken out, by adopting extinction standards and other standards used by the Customs Authority for this purpose in accordance with the laws in force.

Tax and customs duties payable for implementation's equipment and their spare parts shall realize on the contractor as shown below:

- a) For the difference between the value of the equipment and the spare parts as in their current status when entering Iraq for the first time and their value when being exported outside Iraq; and
- b) For the value of the equipment and the spare parts as in their current status when entering Iraq for the first time in case of keeping them inside Iraq and not being exported after contract completion.

In case of payment of tax and customs duties for any of the equipment and spare parts by the contractor within 28 days of his demand for them from Customs Authority, the amount of the bank guarantee of export guarantee shall be reduced by the percentage of equipment and spare parts that have been exported out of Iraq, and otherwise the amount of guarantee shall be kept in full by the Customs Authorities.

### **Article 6-23 Work Regulators:**

(Paragraph added to Chapter Six of the General Conditions of Contract)

Contractor shall work, bound and comply with the provisions of the Labor and Social Security Law in force in Iraq, including workers' rights to join and choose their professional unions.

### **Article 6-24 Non-Discrimination and Equal Opportunities:**

(Paragraph added to Chapter Six)

The Contractor shall not issue appointment decisions based on personal specifications unrelated to the professional requirements, and he shall adopt the principle of equal opportunities and fair employment of workers and non-discrimination and favoritism in work relations in all what is related to determining salaries or incentives or working conditions or training opportunities or entertainment or contract termination or retirement or discipline. And he shall work according to the national laws of work to achieve the requirements of this paragraph; any action taken by the contractor to correct any of the previous practice of favoritism will not be considered a discrimination case.

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Notification of Award  
Acceptance Letter

(Shall be written on employer's letterhead)

[Insert the number]

[Insert the date]

To: (contractor's name and address)

Subject/ Award of Works {insert contract's number, identification and title}

We would like to inform you that approval has been obtained on your tender dated {Insert the date} for the implementation of works {contract name and number as specified in the contract date} and in the accepted value of the contract amount {Insert the amount in numbers and words} {Insert the currency} as being corrected and amended according to the Instructions to Bidders and has been accepted.

For your kind information and provide us with performance bond within 28 days of the date of the Acceptance Letter above under the form specified in Section Nine (Special conditions of contract annexes and contract forms in the bidding documents) We enclose herewith a copy of the contract agreement form.

With appreciation

Attachments:

Contract agreement form

Authorized signature: .....

Signatory's name and title: .....

Employer's name: .....

## Contract Agreement

This agreement is made on {insert the day, month, year} between first party {insert the contracting party and its address} (hereinafter called the "employer") and the second party {insert the name and address of the contractor} and whereas the employer wishes the contractor to implement the works specified in the contract {insert contract's name and number} and the employer approved the contractor's tender to implement and complete these works and to repair any defect therein.

Both parties have agreed on the following:

1. The words and paragraphs mentioned in this agreement shall have the same meaning assigned to them in contract documents.
2. Each of the documents listed below shall be deemed to constitute, read and interpreted, as an integral part of this Contract Agreement, and this contract agreement shall prevail over all the remaining contract documents.
  - 1) Award Letter (Award);
  - 2) Contractor's bid;
  - 3) Amendments of the Bid Letter numbered ..... (if any);
  - 4) Special Conditions of the contract;
  - 5) General Conditions;
  - 6) Specifications;
  - 7) Drawings;
  - 8) Complete Tables;
3. Contractor undertakes to implement and complete the works and repair any defect therein in all respects under the requirements and conditions of the contract for the amounts to be paid to him by the employer and as specified in the Contract Agreement.
4. The employer undertakes to pay the contractor, in exchange for his implementation and completion of the works, and repair any defect therein, the value of the contract or any other amount due under the provisions of the contract at the times and in the manner stipulated in the contract.

In witness whereof, the parties hereto caused this agreement to be implemented **under the Iraqi law and the Iraqi legislations organized to perform the government contracts.**

Signature ..... {Insert the name, position and address of employer representative}

Signature ..... {Insert the name, position and address of contractor representative}

**Bank Performance Bond**      Good Performance Guarantee  
(Unconditional)

[to be completed by the **bank/ winning Bidder**, who shall provide the guarantee, sample of this performance bond according to the instructions referred to in parentheses, if the employer needs such kind of guarantee] .

[Insert name of the bank and address of the branch or issuing office]

**Beneficiary:** [Insert name and address of the employer]

**Date:** [Insert the date]

Performance Bond No.: [Insert the number]

**We have been informed that** [Insert the name of contractor] **(hereinafter called as the "contractor") has entered in contract number** [Insert contract number] **dated with you, to implement** [Insert contract title and brief description of the work imposed on him] **(hereinafter called as the "contract")**

Accordingly, we are aware, according to the terms of the contract, that the performance bond is required.

At the request of Contractor, we [insert name of the bank] commit ourselves irrevocably to pay any amount or amounts that do not exceed in total the amount [insert amount in figures] ([insert amount in words]) <sup>1</sup> Iraqi dinars, as soon as we receive your first written request accompanied by a written affidavit stating that the Bidder has violated his obligation (s) in the contract without the need for you to prove or explain the basis for your request.

This guarantee expires not before 28 days from the date of issuance of the Acceptance Certificate specified in the copy of the certificate to be presented to us, or on the date of [insert date in day, month and year] <sup>2</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee shall be received by us in this bank at or before that date.

**This guarantee is subject to the Iraqi Law upon taking the procedures against the contractor who violated his obligations.**

[Signature (s) of authorized representative (s) from the bank]

<sup>1</sup> the grantor (the bank) shall put an amount represent a percentage of the contract value specified in the contract

<sup>2</sup> Insert the date for the twenty-eight days after the expected completion date. The employer shall be aware that in case of extension of the expiry of the contract duration, the employer will need to request an extension to this guarantee from the guarantor. This request shall be in writing and prior to the completion date stipulated in the guarantee. In the preparation of this guarantee, the employer may consider adding the following text to the form, at the end of the paragraph before the last: "the guarantor agrees to extend this guarantee for one time and for a period not to exceed [six months] [one year], in response to the written request of the employer for such extension, provided that he submits such a request to the guarantor before the end of this guarantee."

### Advance Payment Guarantee

[to be completed by the **bank/ winning Bidder**, who shall provide the guarantee according to the instructions referred to in parentheses, if the employer requires such kind of guarantee] .

[Insert name of the bank and address of the branch or issuing office]

**Beneficiary:** [Insert name and address of the employer]

**Date:** [Insert the date]

**Advance Payment Guarantee :**{ Insert the number}

We have been informed that [Insert the name of contractor] (hereinafter called as the "contractor") has entered in bid number [Insert bid number] dated with you, to implement [Insert contract title and brief description of the work] (hereinafter called as the "contract")

We are aware, according to the terms of the contract that an advance payment should be provided against the advance payment guarantee in the amount mentioned later.

At the request of Contractor, we [insert name of the bank] commit ourselves irrevocably to pay any amount or amounts that do not exceed in total the amount [insert amount in figures] ([insert amount in words]) <sup>3</sup>, as soon as we receive your first written request accompanied by a written affidavit stating that the contractor is in violation of his obligation to the contract because the contract has used the advance payment for purposes other than the costs for the preparation of Works.

This guarantee impose as a condition for the payment for any claim or payment under this guarantee, the necessity that the contractor has received previously mentioned advance payment on his account number [insert number] at [insert name and address of the bank].

The maximum amount of this guarantee will be reduced consistently by the amount recovered from the advance payment that are returned by the contractor as indicated by the copies of progress data or payment certificates provided to us. The validity of this guarantee will expire, at the latest, as soon as we receive a copy of the progress payment certificate which indicates that 80% of the value of the contract has been approved for payment, or on [insert the date in day, month and year ] , <sup>4</sup> whichever is earlier. Consequently, any demand for payment under this guarantee shall be received by us in this office at or before that date.

**This guarantee is subject to the Iraqi Law upon taking the procedures against the contractor who violated his obligations.**

[Insert signature (s) of authorized representative (s) of the bank]

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<sup>3</sup> the guarantor shall put an amount represents the advance payment

<sup>4</sup> insert the expected date for the expiry of completion dates. The employer shall be aware that in case of extension of the expiry of the contract duration, the employer will need to request an extension to this guarantee from the guarantor. This request shall be in writing and prior to the completion date stipulated in the guarantee. In the preparation of this guarantee, the employer may consider adding the following text to the form, at the end of the paragraph before the last: "the guarantor agrees to extend this guarantee for one time and for a period not to exceed [six months] [one year], in response to the written request of the employer for such extension, provided that he submits such a request to the guarantor before the end of this guarantee.



## Guarantee of the release of the second half of the cash deductions

[Insert name of the bank and address of the branch or issuing office]

Beneficiary: [Insert name and address of the employer]

Date: [Insert the date]

### **Bank guarantee for cash deductions:** [Insert the number]

We have been informed that [Insert the name of contractor] (hereinafter called as the "contractor") has entered in contract number [Insert contract number] dated [Insert the date of contract signature] with you, to implement [Insert contract title and brief description of the works] (hereinafter called as the "contract").

We are aware, according to the terms of the contract, that whenever the initial acceptance certificate of the works is issued and the approval of paying the first half of the cash deductions is obtained, and that the release of the payment {insert the second half of cash deductions or the difference between the half cash deductions and the amount of the performance bond if the amount of the performance bond is less than the half of the cash deductions on the date of initial acceptance certificate}, a bank guarantee will be made for the cash deductions.

At the request of Contractor, we [insert name of the bank] commit ourselves irrevocably to pay any amount or amounts that do not exceed in total the amount [insert amount in figures] ([insert amount in words]), as soon as we receive your first written request accompanied by a written affidavit stating that the contractor is in violation of his obligation under the contract in repairing the defects and shortages that appear during the maintenance period (the Period of Repair of Defects)

And a condition for the disbursement of any compensation or payment under this guarantee to you, is that the contractor has received the second half of the deductions referred to above in his account number ----- deposited at the bank {insert the name and address of the bank}.

This guarantee is valid till (21) days from the date of receipt by the employer for a copy of the Performance Certificate (Final Acceptance Certificate) issued by the engineer. Also, any claim for payment of any amounts due under this guarantee must be returned to our bank no later than the effective date of this guarantee referred to above.

**This guarantee is subject to the Iraqi Law upon taking the procedures against the contractor who violated his obligations.**

[Insert signature (s) of authorized representative (s) of the bank]

## Invitation to Bid

{Insert the Project's name}

{Insert the title of the Invitation to Bid}

{Insert the number of the Invitation to Bid}

{Insert the number of the project in the federal plan}

1. The document of the Invitation to Bid that follow the announcement of the public tender for the project that been done in the national newspapers {Insert the names, numbers and dates of the newspapers} as well as the bulletin in (DG. Market) and (UNDO online).
2. The {Insert the name of the contracting authority} shall invite qualified and experienced bidders to submit their bid for the work {Insert a brief description of the works required to be implemented}.
3. Work will be carried out according to the approved mechanism of international public tenders which allows for all bidders from eligible countries to participate in it as specified in the explanatory bulletin issued by the United Nations (for the definition of eligible countries).
4. The qualified bidders who wish to obtain more information shall contact {Insert the name of the contracting authority, and the name and E-mail address of the employee in charge}  
{Insert the working hours} as specified in the Instructions to Bidders.
5. Qualification requirements required {Insert a list of technical, financial and legal requirements etc.} Are bids subject to give preference to local bidders {Insert yes or no} and also {Insert the percentage of preference to the bidders}
6. The interested bidders may buy bidding documents in the language {Insert document's language} after submitting a written request to the address specified in the Instructions to Bidders and after paying the sale value of the documents amounting to {Insert the amount in dinar} or {Insert the value in other currency convertible}. The payment method will be through {Insert the payment method} and documents will be sent the {Insert the manner in which documents shall be send}.
7. The bids shall be delivered to the following address {Specify the address indicated in the Instructions to Bidders} on time {Insert the time and date of submission}.  
Submission by e-mail {Insert allowed or not allowed}. Delayed bids shall be rejected. Bids shall be opened in the presence of bidders or their representatives who wish to attend at the following address {Insert the address specified in the Instructions to bidders} at the time and date {Insert the time and date}. All bids must include Bid Security {Insert a bank letter of guarantee or a certified check} in the amount of {Insert the amount in Dinar} or in equivalent currency convertible.
8. Addresses referred to above are {Insert the address/ detailed addresses including the name of the contracting authority, the competent section, name of the person in charge, building number, street number, sector (Mahalla) number, city, country, insert the e0mail address if submission of bids electronically is allowed}.

Signature

Name of authorized representative of the contracting authority

Title of the authorized representative of the contracting authority