

CONDITIONS OF CONTRACT

PART 2: CONDITIONS OF PARTICULAR APPLICATION

Sub-Clause 1.1 Definitions

1.1.2.2 The Employer is:

Ministry of Environment & Energy,
Ameenee Magu,
Male,
Republic of Maldives.

1.1.2.4 The Engineer is:

Same as Employer

Amend sub para. 1.1.1.8 of Sub-Clause 1.1 by adding the following words at the end:
"The word 'tender' is synonymous with 'bid' and the words "tender documents" with 'bidding documents'."

- I **“MEE”** means the Ministry of Environment & Energy, Maldives.
- II **“Addendums/Addenda”** means the interpretations of and/or changes in the Tender Documents, issued to all prospective bidders prior to the Bid opening, and upon issuance considered to become an integral part of the Tender Documents and Contract Documents, wherever applicable.
- III **“Approved”** means approved in writing, including subsequent written confirmation of previous verbal approval and “approvals means approval in writing, including as aforesaid.
- IV **“Bid”** means proposal submitted by the bidder in accordance with terms and conditions of this contract. For the purpose of these documents, the terms “bid” and “tender”, “bidder” and “tenderer”, “bidding” and “tendering” and other similar expressions are synonymous.
- V **“Dispute”** means the lack of agreement between the parties that have any obligation, duties or responsibilities under the terms of the contract.
- VI **“Government”** means the Government of the Republic of Maldives and its authorized agents or representatives.
- VII **“USD”** means United States Dollars.
- VIII **“Month”** means the calendar month.
- IX **“Project”** means Provision of Water Supply facilities in B. Eydhafushi, Maldives.

Sub-Clause 1.4 Law & Language

- (a). The language is the English Language.
- (b). The law is that in force in the Republic of Maldives.

Sub-Clause 1.5 Priority of Documents

The priority of the documents shall be in accordance with the following sequence:

- (1) the Contract Agreement (if completed);
- (2) the Letter of Acceptance;
- (3) the Bid and the Contract Data;
- (4) Addendums to the Tender (if any)
- (5) the Conditions of Contract [Part 2] – Conditions of Particular Applications
- (6) the Conditions of Contract [Part 1] – General Conditions of Contract
- (7) the Specifications;
- (8) the Drawings;
- (9) the Priced Bill of Quantities; and
- (10) other documents, as listed in the Contract Data

In case of discrepancies between drawings, those of larger scale shall govern unless these are superseding by a drawing of later date regardless of scale.

Sub-Clause 3.2 Delegation by Engineer

Add the following:

No dispute shall exist with any communication of the Engineer's Representative unless the Engineer has first confirmed, reversed or varied the contents of any such communication pursuant to this Sub-Clause.

Sub-Clause 4.1 Contractor's General Obligations

Add the following sentence at the end of Sub-Clause 4.1:

"The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or any other defect in the design of or specifications for the works which he discovers when reviewing the Contract Documents or in the process of execution of the Works."

Sub-Clause 4.2 Performance Security

"The Contractor shall provide security for his proper performance of the contract to the Employer within 14 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of a bank guarantee, as stipulated by the Employer in the Contract Data. The performance security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. The Contractor shall notify the Engineer when providing the performance security to the Employer.

"The bank guarantee shall be issued by a bank which has been determined in advance to be acceptable to the Employer.

"Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer's written request, shall promptly increase the value of the performance security in that currency by an equal percentage. The performance security of a joint venture shall be in the name of the joint venture."

Sub-Clause 4.3 Language Ability of Contractor's Representative

Add the Sub-Clause 4.3 as follows:

"If the Contractor's authorized representative is not, in the opinion of the Engineer, fluent in the language specified in the Contract Data, the Contractor shall have available on site at all times a competent interpreter to ensure the proper transmission of instructions and information."

Sub-Clause 4.8 Safety procedures

Amend subparagraph to read as follows:

"Take all reasonable steps to protect the environment in all construction areas to mitigate any negative effects to air, fresh groundwater lens quantity and quality, sea water quality, plantation or soil quality, or marine life as a result of the construction activities and to avoid damage or nuisance to persons or property of the public or others resulting from pollution, noise, or other causes arising as a consequence of his methods of operation.

Add the Sub-Clause as follows:

"In the event, the contractor is not providing / maintaining the safety arrangements i.e. lights, guards, fencing, warning signs and watching when and where necessary or required by, the Engineer or by and duly constituted authority, the Contractor shall be liable to pay as compensation an amount equal to ¼ percent per day or such smaller amount as the Engineer may decide on the total tendered amount subject to a maximum of 2% of Contract amount."

Sub-Clause 6.3 Employment of Persons in the Service of Others

The Contractor shall not recruit or attempt to recruit his staff and labor from amongst persons in the service of the Employer or the Engineer.

Sub-Clause 6.6 Facilities for Staff and Labor

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labor, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture, and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps or housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer.

Sub-Clause 6.7 Health and Safety

The Contractor shall within 24 hours of the occurrence of any accident at or about the Site or in connection with the execution of the work report such accident to the Engineer's Representative. The Contractor shall also report such accidents to the competent authority wherever such report is required by law.

The Contractor shall have on his staff on Site an officer dealing with questions regarding the safety and protection against accidents of all staff and labor. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents.

The Contractor shall observe the conditions of any Workmen's Compensation Ordinance or Act of the Law of Maldives providing for the payment of compensation by employers to workmen (or their dependents) who die or are injured as a result of an accident arising out of or in the course of their employment.

Sub-Clause 6.8 Contractor's Superintendence

Add the Sub-Clause 6.8 as follows:

"A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the language specified in the Contract Data or the Contractor shall have available on site at all times a sufficient number of competent interpreters to ensure the proper transmission of instructions and information."

Sub-Clause 6.9 Contractor's personnel

Add the Sub-Clause 6.9 as follows:

"The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the country in which the Permanent Works are to be executed."

The Engineer shall have full powers at all times to object to the employment and to require the contractor to remove forthwith from the site, the agent, workman, foreman or any other person employed by the Contractor or any sub-contractor, who in the opinion of Engineer is undesirable and the Contractor shall comply with the request forthwith.

No such agent, workman, foreman or other employee after his removal from the work by request of the Engineer shall be re-employed or reinstated by the Contractor for the purposes of and in connection with the contract at any time, except with the prior approval in writing of the Engineer.

Sub-Clause 6.13 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff, labor, and subcontractors for the purposes of or in connection with the Contract.

Sub-Clause 6.14 Supply of water

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labor.

The Contractor shall comply with the requirement of appropriate sanitary authorities and shall provide and maintain efficient and sanitary hygiene accommodation wherever required on the site.

The Health Officer or other sanitary Authority shall be informed when works are completed and when works are about to begin and the instructions of the Health or other Sanitary Authority shall be complied with.

Sub-Clause 6.17 Arms and Ammunition

The Contractor shall not otherwise than in accordance with the Status, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

Sub-Clause 6.18 Festival and Religious Customs

The Contractor shall in all dealings with his staff and labor have due regard to all recognized festivals, days of rest and religious and other customs.

Sub-Clause 6.19 Funeral Arrangements

The contractor shall make any necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in Maldives. The Contractor shall also be responsible, to the extent required by the local regulations for making any arrangements with regard to transportation and burial of any of his local employee who may die while engaged upon the works.

Sub-Clause 6.22 Employment Records of workers

The Contractor shall keep proper wage books and time sheets showing wages paid and time worked by the workmen in and about the execution of the Contract, and he shall be bound whenever required, to produce such wage books and time sheets for the inspection of any person authorized by the Labor Department.

Clause 7 Plant , Materials and Workmanship

Add the following paragraph:

"The Contractor is encouraged, to the extent practicable and reasonable, to use materials. Contractor's Equipment, Plant, and supplies from sources within the country where the Permanent Works are to be executed, as stipulated in the Contract Data."

Sub-Clause 8.3 Programme

"The time within which the program shall be submitted shall be Fourteen (14) Days."

Cash Flow Estimate to Be Submitted

"The time within which the detailed cash flow estimate shall be submitted shall be Fourteen (14) Days."

Add the following text to the end Sub-Clause 8.3:

"In the event of non-submission of the programme or revised/amended programme of work by the Contractor for approval by the Engineer within the period specified by the Engineer, the Contractor shall be liable to pay as compensation an amount, equal to ¼ percent per day or such smaller amount as the Engineer (whose decisions in writing shall be final) may decide on the total tendered amount of the work subject to a maximum of 2% of Contract amount."

Sub-Clause 8.7 Delay Damages

Add the following texts:

If the Contractor fails to achieve Completion of the Work within the Contract Time as defined in Sub Clause 8.2 hereof then the Contractor shall be liable for the ascertained cost

incurred by the Owner by way of additional site supervision, Engineer's site supervision costs necessary for the proper administration of the Contract Works and the Owner shall be entitled to deduct the reasonable costs and expenses thereof from any amounts due or which may become due to the Contractor or to otherwise recover such costs as a debt from the Contractor.

Maximum Amount of Liquidated Damages

"The Liquidated damages for the works payable to the Employer shall be subject to a maximum of ten (10) percent of the Contract price".

Clause 11 Defects Liability

To Clause 11, add the following:

Correction of Defects

- (a). The Employer shall give notice to the Contractor of any defects before the end of the Defect Notice Period, which begins at Completion.
- (b). Every time notice of a defect is given, a Defects Correction Period for the notified defect begins. The Contractor shall correct the notified defect within the Defects Correction Period at no cost to the Employer. The length of the Defects Correction Period is stated in the Contract Data.
- (c). The Contractor shall correct Defects which he notices himself before the end of the Defects Notice Period.
- (d). The Employer shall certify that all Defects have been corrected. If the Employer considers that correction of a Defect is not essential he can request the Contractor to submit a quotation for corresponding reduction in the Contract Price. If the Employer accepts the quotation, the corresponding change in the Contract Data is a Variation.

Sub-Clause 12.4 Omissions

Add the following:

Items of the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

Clause 14 Contract Price and Payment

Sub-Clause 14.1 The Contract Price

The Contract Price Amend the Sub-Clauses of Clause 14.1 to read as follows:

(Alternative paragraph)

- (e) Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including

essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the Time for Completion plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event the Contractor's Equipment is not exported from the Country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon the completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare part to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable Laws. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to be exported; and (b) on the initial imported value of Contractor's Equipment and spare parts remaining in the Country after completion of the Contract. Upon payment of such duties within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

Sub-Clause 14.3 Application for Interim Payment Certificates

The Contractor shall submit a statement in the number of copies specified in the Contract Data to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (a) the estimated Contract value of the Temporary and Permanent Works executed up to the end of the month in question, determined in accordance with Sub-Clause 14.3, at the unit rates and prices included in the Contract;
- (b) The actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at the unit rates and prices included in the Contract;
- (c) the estimated Contract value at the unit rates and prices included in the Contract of the Temporary and Permanent Works for the month in question, obtained by deducting (b) from (a);
- (d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts, pursuant to Clause 13;

- (e) amounts approved in respect of Day work executed up to the end of the month in question, less the amount for Day work certified in the previous Interim Payment Certificate, as determined from the Day work Schedule of the Bill of Quantities;
- (f) Amounts reflecting changes in cost and legislation, pursuant to Sub-Clauses 13.7 and 13.8;
- (g) Any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

Sub-Clause 14.6 Issue of Interim Payment Certificates

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which has been issued by him, and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

Sub-Clause 14.10 Statement at Completion

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement at Completion in the number of copies specified in the Contract Data with supporting documents showing in detail, in the form approved by the Engineer.

- (a) The final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate;
- (b) Any further sums which the Contractor considers to be due; and
- (c) An estimate of amounts which the Contractor considers will become due to him under the Contract.

Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 14.6.

Sub-Clause 14.11 Application for Final Payment Statement

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Clause 11, the Contractor shall submit to the Engineer for consideration a draft final statement in the number of copies stipulated in the Contract Data with supporting documents showing in detail, in the form approved by the Engineer,

- (a) The value of all work done in accordance with the Contract; and
- (b) Any further sums which the Contractor considers to be due to him under the

Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").

If following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer an Interim Payment Certificate for those parts of the draft final statement, if any, which are not in dispute. The dispute shall then be settled in accordance with Clause 20. The Final Statement shall be the agreed upon settlement of the dispute.

Clause 18 Scope of Cover

The insurance in Clause 18 shall be in the joint names of the Contractor and the Employer and shall cover:

- (a) The Employer, the Consultant and the Contractor against loss or damage as provided in the details of insurance annexed to these Conditions, from the first working day after the Commencement Date until the date of issue of the relevant Taking Over Certificate in respect of the Works or any Section or part thereof as the case may be:
and
- (b) The Contractor for his liability:
 - (i) During the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, or
 - (ii) Caused by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Sub-Clause 4.1.

It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.

Evidence and Terms of Insurances

The Contractor shall provide evidence to the Employer that the insurances required under the Contract have been affected and shall, within 14 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall

be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall affect all insurances for which he is responsible with insurers and in terms approved by the Employer.

Source of Insurance

"The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to Clause 18) with insurers from any eligible source country acceptable to the Employer."