

Swing Bridge Replacement
44-28-75-04-N

BETWEEN



THE GOVERNMENT OF BERMUDA

(acting by and through the Ministry of Public Works and Environment)

AND

[Insert Contractor's Logo]

[Insert Contractor's Name]

[Insert Date of Contract]

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LETTER OF TENDER

NAME OF CONTRACT: Swing Bridge Replacement

TO: Ministry of Public Works and Environment, Bermuda

We have examined the Conditions of Contract; Procuring Entity's Requirements; the attached Appendix; and Addenda Numbers _____ to _____ for the above-named Works. We have examined, understood and checked these documents and have ascertained that they contain no errors or other defects. We accordingly offer to design, execute and complete the Works and remedy any defects therein, in conformity with this Tender which includes all these documents and the enclosed Proposal, for the lump sum of

(in words) _____

(in figures) _____

We agree to abide by this Tender until _____ and it shall remain binding upon us and may be accepted at any time before that date. We acknowledge that the Appendix forms part of this Letter of Tender.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as is reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion.

We understand that you are not bound to accept the lowest or any offer received for the Works.

Signature: _____

Name: _____ Date: _____

Capacity: _____

Authorised to sign on behalf of: _____

APPENDIX TO TENDER

This Appendix forms part of the Contract Agreement.

[Note: with the exception of the items for which The Procuring Entity's requirements have been inserted, the Contractor shall complete the following information before submitting his offer]

**Procuring Entity's
Name and Address**

Sub-Clause 1.1.2.2 and 1.3

Ministry of Public Works and Environment
56 Church Street
Hamilton, HM 12
Bermuda

The terms "The Employer" or "Employer" wherever used throughout the contract documents is amended by virtue of the "Amended Clauses" by inserting in their place the term "The Procuring Entity" or "Procuring Entity" as the case may be. This is done for the avoidance of any doubt that the relationship created with "the Contractor" is an independent contractor relationship and not one of Employer and Employee.

**Contractor's Name and
Address**

Sub-Clause 1.1.2.3 and 1.3

**Engineer's Name and
Address**

Sub-Clause 1.1.2.4 and 1.3

Commencement Date**Sub-Clause 1.1.3.2**

“Shall be Thirty (30) days after the issuing of the Notice of the Commencement Date, (The Notice shall give Thirty (30) days’ notice of the Commencement Date) and shall be within 42 days after the Contractor receives the Letter of Acceptance”

Time for Completion of the Works**Sub-Clause 1.1.3.3**

_____ days from Commencement Date

Defects Notification Period**Sub-Clause 1.1.3.7**

The Defects Notification Period shall be calculated from the date of issue of the Taking Over Certificate in accordance with the Table – Summary of Sections below.

Section**Sub-Clause 1.1.5.6**

The work shall be divided into three (3) distinct parts, namely: New Bridge Works, Old Swing Bridge Demolition and New Bridge Maintenance. Section means each of the three (3) distinct parts of the work individually and the word Sections shall refer to all three (3) distinct parts of the replacement work collectively. Please see Table: Summary of Sections below.

Table - Summary of Sections

Description Sub-Clause 1.1.5.6	Time for Completion Sub-Clause 1.1.3.3	Defects Notification Period	Delay Damages Sub-Clause 8.7	Retention Sub-Clause 14.3	Performance Security Guarantee
New Bridge Works Section	(TBD)	2 years	USD 4,500 per day	5%	100% of Accepted Contract Amount
Old Swing Bridge Demolition Section	26 weeks after date of New Bridge Works Taking over Certificate (or TBD)	60 days	USD 2,500 per day	n/a	n/a

Description Sub-Clause 1.1.5.6	Time for Completion Sub-Clause 1.1.3.3	Defects Notification Period	Delay Damages Sub-Clause 8.7	Retention Sub-Clause 14.3	Performance Security Guarantee
New Bridge Maintenance Section	2 years after New Bridge Works date of Taking Over Certificate	90 days	USD 1,000	2.5%	n/a

**Electronic
Transmission Systems**

Sub-Clause 1.3

Notices or notices, must be delivered by electronic mail utilizing systems with delivery and read receipt notifications, and by hand (against receipt). Electronic mail utilizing systems with delivery and read receipt notifications shall be permitted for other communications.

Governing Law

Sub-Clause 1.4

The Contract shall be governed solely by the Laws of Bermuda

Ruling Language

Sub-Clause 1.4

English.

**Language for
Communications**

Sub-Clause 1.4

English.

**Time for Access to the
Site**

Sub-Clause 2.1

Access to Swing Bridge Cottage (Operator's Hut) and Transformer and Switchgear building, 1 year after commencement date, unless otherwise agreed.

At Commencement Date for all other parts of the site.

**Amount of Performance
Security**

Sub-Clause 4.2

Amount of Performance Security as in the Table – Summary of Sections

Performance Security to be reduced by 75% at date of Taking Over Certificate for the New Bridge Works Section

Period for notifying unforeseeable errors, faults and defects in the Procuring Entity's Requirements	Sub-Clause 5.1 42 Days after Commencement Date
Normal Working Hours	Sub-Clause 6.5 Normal Working hours are Monday to Saturday 7:30 to 19:30 hours
Delay damages for the Works	Sub-Clause 8.7 and 14.15 (b) As in the Table – Summary of Sections
Maximum Amount of Delay Damages	Sub-Clause 8.7 10% of the Accepted Contract Amount
Percentage for Adjustment of Provisional Sums	Sub-Clause 13.5 (b) (ii) The rate for overhead and profit charges is 15%
Adjustments for Changes in Cost	Sub-Clause 13.8 Sub-Clause does not apply
Advance Payment	Sub-Clause 14.2 Sub-Clause does not apply
Currencies and Proportions	Sub-Clause 14.2 In United States Dollars
Start Repayment of Advance Payment	Sub-Clause 14.2 (a) Not Applicable
Repayment amortisation of advance payment	Sub-Clause 14.2 (b) Not Applicable

Percentage of Retention	Sub-Clause 14.3 As in the Table – Summary of Sections
Limit of Retention Money	Sub-Clause 14.3 5% of Contract Price
Schedule of Payments	Sub-Clause 14.4 See attached Schedule of Payments
Plant and Materials intended for the Works	Sub-Clause 14.5 Not Applicable
Plant and Materials for payment when shipped en route to the Site	Sub-Clause 14.5(b) List if applicable
Plant and Materials for payment when delivered to the Site	Sub-Clause 14.5(c) List if applicable
Minimum amount of Interim Payment Certificate	Sub-Clause 14.6 Not Applicable
Release of Retention	Sub-Clause 14.9 Half of retention at time of issue of Taking Over Certificate of New Bridge Works Section Remaining retention, at time of issue of Taking over Certificate for New Bridge Maintenance Works Section
Currency/Currencies of Payment	Sub-Clause 14.15 In United States Dollars.
Limitations of Liability	Sub-Clause 17.6 Limitations of Liability as in the Particular Conditions.

Periods for Submission of Insurance

Sub-Clause 18.1 Insurance

Insuring Party shall be in all cases the Contractor.
Insurance shall be effected and policies provided by no later than 14 days prior to Commencement Date.

Maximum amount of Deductibles for insurance of The Procuring Entity's risk

Sub-Clause 18.2 (d)

Full reinstatement cost
Maximum deductible: USD 12,000

Minimum Amount of Third Party insurance

Sub-Clause 18.3

USD 5,000,000 for each and every occurrence and in the aggregate.

Maximum deductible: Bodily injury nil, Property damage USD 5,000

The DAB shall be

Sub-Clause 20.2

Not Applicable. The DAB is replaced with the procedure described under sub-clause 20.5 entitled Amicable Settlement in the Particular Condition.

Appointment (if not agreed) shall be made by

Sub-Clause 20.3

Not applicable.

EXAMPLE FORM OF PERFORMANCE SECURITY – DEMAND GUARANTEE

Brief Description of Contract: Construction of a new bridge in Bermuda to replace Swing Bridge, demolition of the old bridge, and maintenance of the new bridge.

Name and address of Beneficiary: Ministry of Public Works and Environment, Bermuda
(The Procuring Entity)

We have been informed that _____ (hereinafter called the "Principal") is your contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we (*name of the bank*) _____ hereby irrevocably undertake to pay you, the Beneficiary, Procuring Entity, any sum or sums not exceeding in total the amount of _____ ("the guaranteed amount", say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (b) the respect in which the Principal is in breach.

Following the receipt by us of an authenticated copy of the taking-over certificate for the whole of the New Bridge Works Section of the works under clause 10 of the conditions of the Contract, such guaranteed amount shall be reduced by 75% and we shall promptly notify you that we have received such certificate and have reduced the guaranteed amount accordingly.

Any demand for payment must contain the Minister's signature which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 70 days after the expected expiry of the defects notification Period for the Works*) _____ (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of Bermuda and shall be subject to the Uniform Rules for Demand Guarantees, published as number 758 by the International Chamber of Commerce, except as stated above.

Date _____ Signature _____

CONTRACT AGREEMENT

This Agreement made the _____ day of _____ 20_____

Between: Ministry of Public Works and Environment, Bermuda (hereinafter called “the Procuring Entity”) of the one part
and _____ (hereinafter called “the Contractor”) of the other part

Whereas the Procuring Entity desires that the Works known as Swing Bridge Replacement should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - a) the Particular Conditions,
 - b) the General Conditions,
 - c) the Contract Agreement
 - d) the Letter of Acceptance (if any)
 - e) the Letter of Tender
 - f) the Appendix to Tender
 - g) The Procuring Entity’s Requirements
 - h) The Schedules
 - i) Addenda to the Request for Proposals
 - j) the Request for Proposals,
 - a) The Contractor’s Proposal
3. The Contractor has examined the documents listed in this Contract Agreement and the Appendix to Tender which forms part of this Contract and offers to execute and complete the Works, and remedy defects therein, in conformity with the provisions of the Contract for the sum of

(in words) _____

(in figures) _____

Or such other sum as may be ascertained under the Contract.

4. The Contractor understands that the Procuring Entity is not bound to accept the lowest or any offer received for the Works.
5. The Procuring Entity hereby covenants to pay the Contractor. In consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.

In Witness whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

SIGNED by: _____

SIGNED by: _____

for and on behalf of the Procuring Entity in
the presence of

for and on behalf of the Contractor in the
presence of

Witness: _____

Witness: _____

Name: _____

Name: _____

Address: _____

Address: _____

Date: _____

Date: _____

CONDITIONS OF CONTRACT

1. GENERAL CONDITIONS

The General Conditions of Contract are the **Conditions of Contract for Plant and Design-Build Contract, First Edition 1999**, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC).

The General Conditions of Contract are amended by the Particular Conditions of Contract.

2. PARTICULAR CONDITIONS

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PARTICULAR CONDITIONS

Preamble

These Particular Conditions supplement the General Conditions, and shall modify, delete and/or add to the General Conditions. Where any clause, paragraph, or sub-paragraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any clause, paragraph, or sub-paragraph in the General Conditions is amended, deleted or superseded by any of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph, not so amended, deleted or superseded shall remain in effect.

Clause numbers herein refer to the same clause numbers as in the General Conditions.

The Particular Conditions of this Agreement also include Additional Clauses.

AMENDED CLAUSES

1 GENERAL PROVISIONS

1A. The terms “The Employer” or “Employer” wherever used throughout the contract documents is amended by inserting in their place the term “The Procuring Entity” or “Procuring Entity” as the case may be. This done for the avoidance of any doubt, that the relationship created between “the Procuring Entity” and “the Contractor” in this Contract, is an independent contractor relationship and not one of employer and employee.

1.1 Definitions

1.1.2.9 This clause will not apply

Add

1.1.3.10 **“Month”** means a Gregorian Calendar Month

1.1.4.13 **“Authorised Contract Amount”** means the amount previously authorised by The Cabinet of Bermuda.

1.1.6.2 Delete and replace by:

“Country” means Bermuda

Add

1.1.6.10 **“Exceptionally Adverse Climatic Conditions”** means an event at the project site and before the completion date for the Works, shown to occur on average less frequently than once in fifteen years which are unforeseeable having regard to meteorological averages; the reasonable expectation of adverse conditions both seasonal and annual during the contract period; the immediate effect of individual instances of exceptionally adverse conditions; and to climatic data published by the Bermuda Weather Service as measured at the L.F Wade International Airport (records available online at weather.bm/climate.asp).”

1.1.6.11 **“Notice” or “notice” means a written communication identified as a Notice and issued in accordance with Sub-Clause 1.3 [Communications].”**

1.1.6.12 “Notice of Dissatisfaction” or “NOD” means the Notice one Party may give to the other Party if it is dissatisfied with The Engineer’s determination under Sub-Clause 3.5 [Determination].”

1.3 COMMUNICATIONS

Add after sub-paragraph (b):

(c) If it is a Notice or notice, it shall be identified as a Notice or notice. If it is another form of communication, it shall be identified as such and include reference to the provision(s) of the Contract under which is issued if appropriate.

1.5 PRIORITY OF DOCUMENTS

Delete and replace with:

“The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) the Particular Conditions,
- b) the General Conditions,
- c) the Contract Agreement
- d) the Letter of Acceptance (if any)
- e) the Letter of Tender
- f) the Appendix to Tender
- g) The Procuring Entity’s Requirements
- h) The Schedules
- i) Addenda to the Request for Proposals
- j) the Request for Proposals,
- k) The Contractor’s Proposal

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.”

2 THE PROCURING ENTITY

2.3 Procuring Entity's Personnel

Add the following paragraph at the end of Sub-Clause 2.3:

“Neither the members nor the staff of the Procuring Entity or the Engineer shall be in any way personally bound or liable for the acts or obligations of the Contractor under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.”

2.4 Procuring Entity's Financial Arrangements

This sub-clause is deleted in its entirety

3 THE ENGINEER

3.1 Engineer's Duties and Authority

Delete the third paragraph and replace with

“The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract.

The Engineer is required to adhere to the following constraints:

- a) The Engineer shall seek support and obtain approval of the Design Team for all aspects of a technical nature that have a direct influence on the design, in order to insure the integrity of the design is maintained.
- b) The documents specified as being required to be submitted for review and/or approval in the Procuring Entity Requirements for the Works shall be subject to review and approval by the Design Team prior to approval by The Engineer.
- c) instruct the Contractor to employ a Subconsultant or Subcontractor that the Contractor has listed as a Team Member in his Proposal for the Works in agreement with the Overseeing Organisation and in coordination with Works Contractor.
- d) notify and seek written approval of the Procuring Entity, for Contractor's proposals of deviations from the Specifications. Procuring Entity approval not to be unreasonably withheld.
- e) all instructions related to nominated sub-contractors, variations, provisional sums and team member changes shall be communicated to the Procuring Entity in advance, justified, and properly documented.

- f) obtain written approval of the Procuring Entity for suspension of The Works.
- g) notify The Procuring Entity immediately after issuing an instruction to the Contractor to suspend progress of part or all of the works.
- h) obtain written approval of the Procuring Entity for any instruction of suspension of work exceeding 7 calendar days.
- i) If the Engineer has reason to believe that the estimated final cost of the contract will exceed the Authorised Contract Amount, then the Engineer must submit a written report, including cost impact, to the Procuring Entity, before the cost of the contract exceeds the amount previously authorised by the Cabinet of Bermuda. The Engineer is required to obtain the written approval of The Procuring Entity for any and all variations that increase the cost of the contract beyond the authorised amount.

The Procuring Entity undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor".

3.3 Instructions of the Engineer

This Sub-Clause is deleted in its entirety and replaced by:

The Engineer may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause.

Subject to the following provisions of this Sub-Clause, the contractor shall comply with the instructions given by the Engineer or Engineer's Representative (if appointed) or delegated assistant, on any matter related to the contract.

If an instruction states that it constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If not so stated, and the Contractor considers that the instruction:

- (a) Constitutes a Variation (or involves work that is already part of an existing variation); or;
- (b) Does not comply with applicable laws or will reduce the safety of the Works or is technically impossible

The Contractor shall immediately, and before commencing any work related to the instruction, give a Notice to the Engineer with reasons. If the Engineer does not respond within 7 days after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Engineer shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Engineer's response.

3.5 Determinations

This Sub-Clause is deleted in its entirety and replaced by:

"Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. The Engineer shall give Notice to both Parties of each agreement. Unless otherwise proposed by the Engineer and agreed by both parties, the Engineer shall provide both parties with a record of the consultation.

If agreement is not achieved within 42 days or within such other time limit as agreed by both Parties, the Engineer shall give a Notice to the Parties accordingly and shall immediately proceed to make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

Within 14 days, the Engineer shall give Notice of Determination to both Parties, with supporting particulars.

If either Party is dissatisfied with a determination of the Engineer:

- (c) The dissatisfied party may give a Notice of Dissatisfaction (NOD) to the other Party, with a copy to the Engineer;
- (d) this NOD shall say that it is a Notice of Dissatisfaction with the Engineer's determination and shall set out the reason(s) for dissatisfaction;
- (e) this NOD shall be given within 28 days after receiving the Engineer's Notice of Determination;
- (f) Thereafter each Party may proceed under Sub-Clause 20.5 [Amicable Settlement]. Time limit to commencement of the Amicable Settlement procedure shall be 42 days.

If no NOD is given by either party within the period of 28 days stated in subparagraph (c) above, the determination of the Engineer shall be deemed to have been accepted by both Parties and shall be final and binding on them."

If the Engineer does not give a Notice of Determination within the time limit, the matter shall be deemed to be a dispute, and each party may proceed under Sub-Clause 20.5 [Amicable Settlement]. Thereafter, time limit to commencement of the Amicable Settlement procedure shall be 42 days.

Add

3.6 Management Meetings

"The Engineer or the Contractor's Representative may require the other to attend management meetings to review the arrangements for future work. The Engineer shall record the business of management meetings and supply copies of the record to those attending the meeting and to The Procuring Entity. In the record, responsibilities for any actions to be taken shall be in accordance with the Contract."

4 THE CONTRACTOR

4.18 Protection of the Environment

Add the following paragraphs immediately after the second paragraph:

In accordance with Environmental Analysis ENV.9 of the Bermuda Plan 2018 the Contractor shall create and implement a Construction Environmental Management Plan (CEMP). The CEMP will determine how the potential impacts from construction activities will be properly managed and mitigated. The CEMP will include, but not be limited to,

- (a) details of temporary construction access and vehicle management;
- (b) delineation of any required staging and storage areas; and
- (c) mitigation measures for noise, vibration, dust, spills and contamination.

The Contractor shall review the CEMP throughout the contract and modify it as appropriate to achieve the objectives it seeks to achieve. Any modification to the CEMP shall be submitted to The Engineer for acceptance.

5 DESIGN

5.1 General Design Obligations

Delete the first sentence of the first paragraph and replace with:

“The Procuring Entity’s Requirements include an outline design and outline of remaining design tasks. The Contractor shall carry out, and be responsible for, remaining design tasks and total system integration. Any changes to the outline design will need a Category III Independent Check Certificate before approval by the Procuring Entity”

6 STAFF AND LABOUR

6.1 Engagement of Staff and Labour

In the last line please replace the word “and” with a comma and immediately after the word transport add a comma and the following words: “working conditions of labour and all other matters connected therewith.”

6.7 Health and Safety

Add immediately after paragraph three (3):

“The Contractor shall report in writing to the Engineer, within 24 hours, the details of any accident whether on-site or off-site in which the Contractor, his personnel or construction plant, or his Subcontractors are directly or indirectly involved. In the case of serious injury, fatality or serious accident, the contractor shall immediately verbally notify the Engineer and report to the appropriate authorities. Such initial notification shall be followed by a written comprehensive report within 24 hours of the accident.

All work shall be carried out in accordance with the current Health and Safety Legislation of Bermuda; the Bermuda Occupational Safety and Health Act, 1982; and Occupation Safety and Health Regulations of 2009. All works overseas must

be carried out in strict accordance with Safety and Health regulations and best practices”.

6.10 Records of Contractor’s Personnel and Equipment

Add a second paragraph as follows:

“The Contractor shall keep a daily log with details of personnel and equipment present on site”

Add the following sub-clauses

6.12 Alcoholic Liquor and Drugs

“The Contractor shall not, otherwise than in accordance with the Statutes, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor, or drugs, or permit, or suffer any such importation, sale, gift, barter, or disposal by his sub-contractors, agents, or employees.

The Government of Bermuda policy includes the provision that no alcohol or prohibited drugs may be consumed on the site or in any vehicle related to the works or service provided. Also, no employee of the Contractor or sub-contractor shall be under the influence of alcohol or drugs whilst at work.”

6.13 Arms and Ammunition

“The Contractor shall not give, barter, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same aforesaid.”

6.14 Festivals and Religious Customs

“The Contractor shall in all dealings with labour in his employment have due regard to all recognized festivals, public holidays, days of rest, and religious or other customs.”

8 COMMENCEMENT, DELAYS AND SUSPENSIONS

8.1 Commencement of Work

Delete first paragraph and replace by:

“Commencement of Work Shall be Thirty (30) days after the issuing of the Notice of the Commencement Date, (The Notice shall give Thirty (30) days’ notice of the Commencement Date) and shall be within 42 days after the Contractor receives the Letter of Acceptance.”

8.3 Programme

Amend the first paragraph to read:

The Contractor shall submit to the Engineer within twenty-eight (28) days after receiving the Notice under Sub-Clause 8.1 [Commencement of Works], a detailed time programme, including critical path. This programme shall be prepared using programming software acceptable to the Engineer. The Contractor shall submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include the Commencement Date and the Time for Completion of the works and of each section (if any): It shall also include:

Amend the last paragraph to read

“If, at any time, the Engineer gives Notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer within fourteen (14) days of the Notice or within such time frame of the Notice as may be mutually agreed, in accordance with this sub-clause”

13 VARIATIONS AND ADJUSTMENTS

13.3 Variation Procedure

Amend the fourth paragraph to read

“Each instruction to execute a Variation shall be issued by the Engineer to the Contractor, who shall acknowledge receipt. The Contractor shall keep records of costs in connection with a Variation”.

13.8 Adjustments for Changes in Cost

This clause will not apply

14 CONTRACT PRICE AND PAYMENT

14.2 Advance Payment

This clause will not apply

14.3 Application for Interim Payment Certificates

Insert the words “an electronic copy of” before the words “a Statement” and delete the words “in six copies” in the first line of the first paragraph so that the paragraph reads as follows:

Delete the first paragraph and replace with:

The Contractor shall submit an electronic copy of a Statement to the Engineer after the end of the period of payment stated in the Contract (if not stated, after the end of each month), in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.21 [*Progress Reports*].

14.4 Schedule of Payments

Delete the first paragraph and replace with:

“The Contract includes a Schedule of Payments specifying the instalments in which the Contract Price will be paid and shall be based on the actual progress in executing the works. The Schedule of Payments shall be reasonably consistent with the Activity Schedule Pricing Form submitted with the Contractor’s Proposal and with the Contractor’s accepted Programme. Unless otherwise stated in the Schedule of Payments:”

16 SUSPENSION AND TERMINATION

16.2 Termination by Contractor

This Sub-Clause is deleted in its entirety and replaced with:

“The Contractor shall be entitled to give a Notice (which shall state that it is given under Sub-Clause 16.2) to the Procuring Entity of the Contractor’s intention to terminate the contract, or in the case of paragraphs (e) and (f) below, a Notice of Termination, if

- (a) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (b) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer’s Claims]),
- (c) the Procuring Entity substantially fails to perform his obligations under the Contract,
- (d) the Procuring Entity fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- (e) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- (f) the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

Unless the Procuring Entity remedies the matter described in this Notice within 14 days of receiving the Notice, the Contractor may by giving a Second Notice to the Procuring Entity, immediately terminate the contract. The date of termination shall then be the date the Procuring Entity receives the Second Notice. However, in the case of subparagraph (e) or (f), the Contractor may by Notice terminate the Contract immediately.

If the Contractor suffers delays and/or incurs cost during the above period of 14 days, the Contractor shall be entitled, subject to sub-clause 20.1, to extension of time for completion and/or payment of such cost plus profit.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

17 RISK AND RESPONSIBILITY

17.2 Contractor's Care of the Works

Add the following paragraph between paragraphs 3 and 4

"The Contractor shall, immediately upon occurrence of any loss or damage to Works, Goods or Contractor's Documents at or about the Site, or in connection with the execution of the Works, report, orally and as soon thereafter as practicable in writing, such loss or damage to the Engineer or the Engineer's Representative. The Contractor shall also report such loss or damage to the appropriate Authority whenever such report is required by Law."

17.6 Limitation of Liability

Add the following paragraph between paragraphs 2 and 3

"The maximum liability of the Contractor to the Procuring Entity (excluding Contractor's obligation to remedy defects under Sub-Clause 11.1) is 100% of the Accepted Contract Amount until the Taking-Over Certificate for the New Bridge Works Section of the Works is issued, and thereafter is 25% of the Accepted Contract Amount".

18 INSURANCE

18.1 General Requirements for Insurance

Replace the first paragraph with:

“In this Clause, the insuring Party is the Contractor.”

Add the following sub-clause

18.5 Insurance for Design

“The Contractor shall effect professional indemnity insurance against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor’s design obligations, ~~which shall cover the risk of professional negligence in the design of the Works.~~ This insurance shall be for a limit of not less than Two Million United States Dollars (US\$2,000,000).

Such professional indemnity insurance shall also indemnify the Contractor against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor’s design obligations under the contract that results in the Works, when completed, not being fit for the purpose they are intended under sub-clause 4.1.

The Contractor shall maintain the professional Indemnity insurance in full force and effect for a period of not less than 6 years from the commencement date of the contract. The Contractor undertakes to notify The Procuring Entity promptly of any difficulty in extending, renewing or reinstating this insurance.”

20 CLAIMS, DISPUTES AND ARBITRATION

20.2 Appointment of the Dispute Adjudication Board

This sub-clause will not apply

20.3 Failure to Agree Dispute Adjudication Board

This sub-clause will not apply

20.4 Obtaining Dispute Adjudication Board's Decision

This sub-clause will not apply

20.5 Amicable Settlement

This sub-clause is deleted in its entirety and replaced with the following:

"If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, if either party believes that a decision taken by the Engineer was either outside of his authority or that the decision was wrongly taken, the dispute shall be settled between the parties by negotiation. The Procuring Entity and the Contractor shall make every effort to resolve amicably by direct negotiations any such disagreement or dispute arising between them under or in connection with the contract.

For the purposes of this sub-clause, a negotiation is deemed to have been initiated as of the date of receipt of Notice by one party of a request from the other party to negotiate the matter in dispute.

If this negotiation is not successfully settled within Thirty (30) days after the date of initiation of negotiation or within such longer period as the parties may mutually agree, then the parties will jointly agree, within seven (7) days after the date of expiration of the period in which the parties should have successfully concluded their negotiations, to appoint a Certified Mediator to conduct a mediation between the parties in arriving at an amicable resolution of the dispute. This procedure shall be private, confidential and without prejudice. The parties will equally bear the cost of the Mediation.

If the parties fail to agree upon the appointment of a Mediator within a fifty-six (56) day ~~the~~ period, then, within seven (7) days of expiration of this period, The Procuring Entity shall request appointment of a Mediator and a date for Mediation by the Bermuda Conflict Resolution Institute. For the purposes of this sub-clause, a Mediator is deemed to have been appointed as of the date of notice of such appointment being given to both parties. The Mediator shall not have the power to impose a settlement on the parties.

If the dispute is not resolved between the parties within seven (7) days after the Mediation, or after such longer period as the parties may mutually agree, the mediator shall advise the parties in writing of the failure of the Mediation.

Within three (3) days of being advised of the failure of the Mediation, The Procuring Entity shall propose in writing a list of not less than three (3) qualified persons to act as the arbitrator. The Contractor shall, within seven (7) days of receipt of the said list from The Procuring Entity, select from the said list one qualified person to act as the single arbitrator over the dispute. Within three (3) days of being notified of the Contractor's selection The Procuring Entity shall refer the dispute to the person selected by the Contractor as arbitrator for arbitration.

The mediator's role in the dispute resolution process shall cease upon appointment of the Arbitrator. The Mediator shall not be called as a witness in the arbitration proceedings.

During the dispute resolution process, the Contractor shall continue to perform the work in accordance with this contract. Failure to do so shall be considered a breach of contract".

20.6 Arbitration

This sub-clause is deleted in its entirety and replaced with

"In the event that the parties are unable to reach an Amicable Settlement pursuant to Sub-Clause 20.5, any dispute shall be finally settled by arbitration.

The seat of the arbitration shall be Bermuda and disputes shall be settled in accordance with the Laws of Bermuda and in particular the Bermuda Arbitration Act of 1986 and the Bermuda International Conciliation and Arbitration Act 1993. If any matters arise where there are no applicable rules of procedure pursuant to the Laws of Bermuda, the rules of procedure to be adopted shall be those published by the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976.

The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, by mutual agreement. The obligations of the Parties and the Engineer shall not be altered by reason of any arbitration being conducted during the progress of the Works.”

20.7 Failure to Comply with Dispute Adjudication Board’s Decision

This clause does not apply

20.8 Expiry of Dispute Adjudication Board’s Appointment

This clause does not apply