

Contract Management Practices in World Bank and PPR 2008: A comparative study

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**Dedicated
To
My Parents**

DECLARATION

I hereby declare that the dissertation entitled “**Contract Management Practices in World Bank and PPR 2008: A comparative study**” submitted to the Institute of Government Studies, BRAC University for the degree of Masters in Procurement and Supply Management is exclusively my own and original work. No part of it in any form, has been submitted to any other University or Institute for any degree, diploma or for other similar purposes.

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CERTIFICATE OF APPROVAL

This is my pleasure to certify that the dissertation entitled “**Contract Management Practices in World Bank and PPR 2008: A comparative study**” is the original work of **S. M. Sadik Tanveer** that is completed under my direct guidance and supervision. So far I know, the dissertation is an individual achievement of the candidate’s own efforts, and it is not a conjoint work. I also certify that I have gone through the draft and final version of the dissertation and found it satisfactory for submission to the Institute of Governance Studies, BRAC University in partial fulfillment of the requirements for the degree of Masters in Procurement and Supply Management.

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ABSTRACT

Public Procurement always tries to achieve value for money and assure best service through maintaining transparency and accountability in spending fund provided by Government or other development partners. These spending are regulated by Public Procurement Regulation. The Public Procurement Act (PPA 2006) and Public Procurement Regulation (PPR 2008) were made effective with effect from 31 January, 2008. The regulation PPR 2008 is strictly followed by various public sector organizations in public procurement of Bangladesh. On the other hand, development partners like the World Bank and others also have their own procurement guideline. Contract management is a process what starts from selecting supplier to completing the project. It may be assumed that not all contract management issues have same level of clarity or complexity- some may have advantageous features over others. So it is expected that if these procurement guidelines and & standard contract documents could be thoroughly compared, analyzed and contextualized with respect to Bangladesh, we would be able to understand which one works well in which managerial context. In view of aforesaid perspective, this research is intended to carry out a comparative study on few selected contract management issues being faced in the field of procurement- which are being practiced by the public sector organizations and different development partners operating in Bangladesh.

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ABBREVIATIONS

PPR	Public Procurement Rules
PPA	Public Procurement Act
STD	Standard Tender Documents
SBD	Standard Bidding Documents
UNDP	United Nations Development Program
WB	World Bank
ADR	Alternative Dispute Resolution
AA	Approving Authority
HOPE	Head of Procuring Entity
PE	Procuring Entity
UNCITRAL	United Nations Commission on International Trade Law
ICC	International Chamber of Commerce
DB	Dispute Board
CGFR	Compilation of General Financial Rules
PWD	Public Works Department
CPTU	Central Procurement Technical Unit
DOFP	Delegation of Financial Powers
PPRP-II	Public Procurement Reform Project II
GCC	General Condition of Contract
PCC	Particular Condition of Contract
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
RFP	Request for Proposals
BBS	Bangladesh Bureau of Statistics

CHAPTER ONE

INTRODUCTION

1.1 Background and Context

Public procurement has been a neglected area of academic education and research, even though public procurement is alleged as a major function of government and even though governmental entities, policy makers and public procurement professionals have paid a great deal of attention to procurement improvements or reforms. (Khi Thai, 2001)

Public procurement has a long history. It was written on a red clay tablet, which found in Syria, the earliest procurement order dates from between 2400 and 2800 B.C. The order was for “50 jars of fragrant smooth oil for 600 small weights in grain” (Coe, 1989, p. 87). Other evidence of historical procurement comprises the development of the silk trade between China and a Greek colony in 800 B.C. (Khi V. Thai, 2001).

Public procurement in Bangladesh embraces government's activities of purchasing, hiring or obtaining of goods, works or services by any contractual means. Various government agencies or procurement entities, especially the ministries, divisions, departments/directorates and other autonomous/semiautonomous bodies or corporations in Bangladesh often acquire/purchase goods, services or works by contractual means. The public procurement procedures and practices of Bangladesh have evolved over the years from the days of British and subsequently Pakistani rule. A compilation of General Financial Rules (CGFR) originally issued under British rule outlines broad, general principles for government contracts to follow, leaving it to the departments to frame detailed rules and procedures for their respective procurements. It was slightly revised in 1951 under Pakistani rule and was reissued in 1994 and again in June 1999 with very few changes. The CGFR also refers to the Manual of Office Procedure (Purchase) compiled by the Department of Supply and Inspection as the guide for the purchase of goods and the Public Works Department (PWD) code as the guide for works. Both date back to the 1930s and have not undergone any revision worthy of mention.

The Government of Bangladesh, as part of the broad public sector reforms, has embarked upon to manage implementation challenges aiming at improving performance of public procurement progressively as part of strengthening overall sectoral governance. In order to achieve its aim and objective, a permanent unit, named as Central Procurement Technical Unit (CPTU) was established in 2002 as implementing unit in the field of procurement reform and reform implementation monitoring. Reform process was carried out with ultimate outcomes of

formulation and issuance of a unified procurement processing system (Public Procurement Regulations 2003), Implementation Procedures for PPR 2003, Public Procurement Processing and Approval Procedures (PPPA), Revised Delegation of Financial Powers (DOFP) and several Standard Tender Documents (STD's)/Standard Request for Proposal Document for the procurement of Goods, Works and Services. Later on in 2006, the Public Procurement Act was passed by the Parliament (PPA 2006) and in 2008; a new set of Public Procurement Rules (PPR 2008) was issued.

In order to strengthen and sustain the public procurement reform, a new technical assistance project titled “Public Procurement Reform Project II (PPRP-II)” was approved by the GOB in June, 2007 which is now under implementation by the CPTU/IMED. Under this program, few government officials from public sector organizations involved in major public procurement were selected to do further research on various procurement issues. Jointly organized by the Chartered Institute of Purchasing and Supply (CIPS), UK and BRAC University, Dhaka- three levels of academic course work (foundation diploma, advanced diploma and graduate diploma) has already been completed by the participants of the program. A top-up Masters program was planned in the project in continuation of the aforesaid course works and this research study work stands at the core of this program.

1.2 Statement of the Problem

The Public Procurement Act (PPA 2006) and Public Procurement Regulation (PPR 2008) are two pillars in the public procurement arena of Bangladesh. These PPA 2006 and PPR 2008 come into effect from 31 January, 2008. The regulation PPR 2008 is strictly followed by almost all of the public sector organizations in public procurement of Bangladesh. Any kind of procurement needs minimum two parties to complete the whole procurement cycle. The contract or agreement terms and conditions are the legal binding between two parties. In case of public procurement, several contract management issues are managed or addressed by The Public Procurement Act (PPA 2006) and Public Procurement Regulation (PPR 2008). On the other hand, development partners like the World Bank and others also have their own contract management criteria.

Managing contract is almost different in each and every procurement project, because of different situation, different working condition, different type of contracting parties, different cycle time of the project and different methodologies of implementing the project. It may be assumed that not all contract management issues have same level of clarity or complexity- some may have advantageous features over others. So it is expected that if these contract

management issues could be thoroughly compared, analyzed and contextualized with respect to Bangladesh, we would be able to understand which one works well in which context.

In view of aforesaid perspective, this research is intended to carry out a comparative study on few selected contract management issues being used in the field of procurement- which are being practiced by the public sector organizations and different development partners operating in Bangladesh.

1.3 Research Question

- What are the similarities and dissimilarities in contract management practices in WB and PPR'08?
- What are the limitations or gap between them?
- What could be the possible scope of improvement?

1.4 Objective of the Study

The Objective of the Study is to identify the common and different features of these two procurement guideline of WB and PPR 2008 in the context of contract management perspective. Another aim is to find out the gaps of implementing these guidelines in contract management.

1.5 Significance of the Proposed Research

This study will try to find out the existing gaps and difficulties of contract management in WB practice and PPR 2008. So these research results will help to manage the contracts in WB funded projects of any public sector organization. Not only this, contract management starts from contract award up to completion of the project. It involves several important issues of maintaining quality, cost and time, such as:

- Price Adjustment
- Conflict of Interest
- Final Payment
- Variation Control
- Time Extension
- Liquidated Damage
- Advance Payment
- Defect Management

- Contract termination and
- Dispute Resolution

This comparative study will give us a picture of the World Bank aided contract management practice in Bangladesh and suggest some overall improvement in foreign fund spend management. This research will also provide us the opportunity to compare the foreign aided contract management practice with that of the fully GOB funded project and suggest some policy improvement.

1.6 Scope and limitation

This study will be limited to contract management practices according to procurement guideline of WB and PPR 2008. But this study could be use for any type of contract, such as works, goods and service contract. Contract management is a process from selection of supplier to successfully completion of the project. But, in this research paper will analyze, summarize and contextualize only the contract management issues after signing the contract. It covers some managerial issues of project implementation phase.

1.7 Methodology

1.7.1 Methods of data collection

The research required data and information of extensive range. Few tools were used to capture those data as follows:

1.7.1.1 Review of PPR 2008

Public Procurement Regulation 2008 covers almost all the aspects of Government procurement locally or internationally. Part- 6, 11 & 12 of chapter three (Principle of public procurement) covers contract administration and management, conflicts and dispute resolution issues. Clouse 78 of chapter four part five covers variation works and chapter seven is about professional misconduct management. Beside Public Procurement Regulation 2008 General Condition of Contract (GCC) and Particular Condition of Contract (PCC) guides any user if problem arises. Extensive and thorough analysis of PPR is the basic source of data in this comparative study.

1.7.1.2 Review of World Bank procurement Guideline

World Bank procurement guidelines is to inform those carrying out a project that is financed in whole or in part by a loan from the International Bank for Reconstruction and Development

(IBRD) or a credit or grant from the International Development Association (IDA), of the policies that govern the procurement of goods, works, and services (other than consultant services) required for the project. A meticulous study of World Bank procurement guidelines provides extensive source data and information for this comparative study.

1.7.2 Analysis of data

A comprehensive comparison study and relative analysis of two procurement guideline in the focus of contract management is the main objective of the study. Similarities and dissimilarities are identified based comparative analysis. Comparison may take place in like by like basis. So that gap and discrepancy will be identified thoroughly.

1.7.3 Place and period of study

The study is conducted under close supervision of Institute of Governance Study, BRAC University in Dhaka. Total span of study time was six months (from June 2012 to November 2012).

CHAPTER TWO

CONTRACT MANAGEMENT ISSUES

2.1 What is Contract?

Contract is a voluntary, deliberate and legally binding agreement between two or more competent parties. Contracts are usually written but may be spoken or implied and generally have to do with employment, sale or lease or tenancy. The remedy for breach of contract can be "damages" or compensation of money. A contract is a legally enforceable promise or undertaking that something will or will not occur.

A contract is an agreement between two or more parties which is intended to be enforceable by the law. There are two important general principles underlying contract:

- Freedom of contract
- Sanctity of contract

2.1.1 Freedom of Contract

Freedom of contract means that the parties are at liberty to make their own bargain, and the court will not interfere with the terms two parties agree upon.

2.1.2 Sanctity of Contract

Sanctity of contract means that the agreement cannot be interfered with either by the parties themselves, or by the court, or by third party. Once one party has made an agreement they must abide it unless they are released from their obligations by the other party.

2.2 Type of Contract

Contract can be different types:

- Bilateral and Unilateral contract
- Void and voidable contract

2.2.1 Bilateral and Unilateral Contract

A contract whereby both parties make promises and are bound is a bilateral contract. If one party makes a promise and is bound, while the other person or party is free to perform or not

as he chooses is called unilateral contract. A classic example of this contract is the case of “Carlill v Carbolic Smokeball Company” (1893).

2.2.2 Void and voidable contract

Void contract is a formal agreement that is illegitimate and unenforceable from the moment it is created. A void contract could be considered void for a number of reasons. Common causes of a void contract are contract terms that are illegal or become illegal due to changes in law; one party to the contract lacks the capacity to enter into a contract because he is a minor or mentally incapacitated; and it is legal but declared null by the courts because it violates a fundamental principle.

Voidable contract a formal agreement between two parties that may be rendered unenforceable for a number of legal reasons. Reasons that can make a contract voidable include failure by one or both parties to disclose a material fact; a mistake, misrepresentation or fraud; undue influence or duress; one party's legal incapacity to enter a contract; one or more terms that are unconscionable; or a breach of contract.

2.3 Contract Management

Contract management or contract administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing on any changes or amendments that may arise during its implementation or execution. It can be summarized as the process of systematically and efficiently managing contract creation, execution, and analysis for the purpose of maximizing financial and operational performance and minimizing risk.

According to Public Procurement Rule 2088 ‘the contract administration and management shall include all administrative, financial, managerial and technical tasks to be performed by the Procuring Entity from contract award until it is successfully concluded or terminated and, payment is made and disputes or claims under it resolved.’

To ensuring economy and efficiency in the implementation of the contract is concern of the World Bank according to their procurement guidelines. WB also gives importance in maintaining transparency in all through procurement process as well as the contract management. There are several features covered by contract management are:

- Determination of strategic focus to reducing variation
- Setting SMART objective
- Understanding data
- Identification of focal area
- Implementing controlling measure and improvements

2.3.3 Time Management

Time management is the act or process of planning and exercising conscious control over the amount of time spent on specific activities, especially to increase effectiveness, efficiency or productivity. Time management may be aided by a range of skills, tools, and techniques used to manage time when accomplishing specific tasks, projects and goals complying with a due date. This set encompasses a wide scope of activities, and these include planning, allocating, setting goals, delegation, analysis of time spent, monitoring, organizing, scheduling, and prioritizing. Initially, time management referred to just business or work activities, but eventually the term broadened to include personal activities as well. A time management system is a designed combination of processes, tools, techniques, and methods. Usually time management is a necessity in any project development as it determines the project completion time and scope. Following are the main steps in the project time management process. Each addresses a distinct area of time management in a project.

2.3.3.1. Defining Activities

When it comes to a project, there are a few levels for identifying activities. First of all, the high-level requirements are broken down into high-level tasks or deliverables. Then, based on the task granularity, the high-level tasks / deliverables are broken down into activities and presented in the form of Work Breakdown Structure.

2.3.3.2. Sequencing Activities

In order to manage the project time, it is critical to identify the activity sequence. The activities identified in the previous step should be sequenced based on the execution order. When sequencing, the activity interdependencies should be considered.

2.3.3.3. Resource Estimating for Activities

The estimation of amount and the types of resources required for activities is done in this step. Depending on the number of resources allocated for an activity, its duration varies. Therefore,

the project management team should have a clear understanding about the resources allocation in order to accurately manage the project time.

2.3.3.4. Duration and Effort Estimation

This is one of the key steps in the project planning process. Once the activity estimates are completed, critical path of the project should be identified in order to determine the total project duration. This is one of the key inputs for the project time management.

2.3.3.5. Development of the Schedule

In order to create an accurate schedule, a few parameters from the previous steps are required. Activity sequence, duration of each activity, and the resource requirements / allocation for each activity are the most important factors. As a part of the schedule, a Gantt chart could be developed in order to visually monitor the activities and the milestones.

2.3.3.6. Schedule Control

No project in the practical world can be executed without changes to the original schedule. Therefore, it is essential to update project schedule with ongoing changes.

2.3.4 Liquidated Damage

Liquidated damages are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance). Sum of money (agreed-to and written into a contract) specified as the total amount of compensation an aggrieved party should get, if the other party breaches certain part(s) of the contract. The contract also establishes what actions or failures to act constitute a breach.

In order for a liquidated damages clause to be upheld, two conditions must be met.

- First, the amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking the benefit of the term.
- Second, the damages must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages.

2.3.5 Contract Termination

Cancellation of an entire contract or of its most significant part is called contract termination. Cancellation of a portion of work is called partial termination. The termination or cancellation of a contract signifies the process whereby an end is put to whatever remains to be performed there under. It differs from Rescission, which refers to the restoration of the parties to the positions they occupied prior to the contract. There are several ways to terminate a contract.

➤ Contract Termination by Completion of the Contract Terms

A contract can be terminated when each party has performed its duties pursuant to the terms of the contract. In such an instance, the contract terminates as a matter of law.

➤ Contract Termination by Agreement

A contract can include provisions whereby the parties agree in the contract itself that the contract terminates upon the occurrence of a specific event. For example, there could be a contract for one party to use all the gas in a tank. In such an instance, the parties can agree that the contract will terminate when the entire tank is empty.

➤ Contract Termination by Inability to Perform

A contract can be terminated when something unforeseeable occurs that prevents the parties from following through with the contract. This situation is referred to as "*impossibility of performance*." For example, parties can agree to the sale of a house from one party to another party. Thereafter, the house burns down. As a result, the parties cannot continue with the real estate transaction contained in the contract and thus, the contract is terminated.

➤ Contract Termination by Breach of Contract

A contract can end when one party breaches the terms of the contract. Such a breach can occur in one of several ways. First, where a party fails to perform as agreed upon in the contract, there is a breach of contract. Moreover, one's failure to abide by the terms of the contract constitutes a breach of contract. Additionally, one party can do something to prevent the other party from performing his or her duties under the contract.

➤ **Contract Termination By Fraud**

A contract can be terminated by what is referred to as "fraud in the inducement." Fraud in the inducement occurs where a party intentionally misleads the other party into entering the contract. For example, a party lies about the subject of the contract and the other party relies upon the statement and agrees to the contract. This misleading action can terminate the contract.

➤ **Remedies for Contract Termination**

If a contract has been terminated, a party has legal recourse against the party in breach of the contract. At this point, one should review the contract to check whether there are any notice requirements wherein one must notify the breaching party as a prerequisite to filing any claims or suits. The aggrieved party may file a law suit in civil court where the party may seek, among other items, monetary damages. In such a case, one should consult an attorney in order to review what rights one has in pursuing legal action.

2.3.6 Dispute resolution

Dispute Resolution generally refers to one of several different processes used to resolve disputes between parties, including negotiation, mediation, arbitration, collaborative law, and litigation. Dispute resolution is the process of resolving a dispute or a conflict by meeting at least some of each side's needs and addressing their interests.

➤ **Negotiation**

Negotiation is a dialogue between two or more people or parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective advantage, to craft outcomes to satisfy various interests of two people/parties involved in negotiation process. Negotiation is a process where each party involved in negotiating tries to gain an advantage for themselves by the end of the process. Negotiation is intended to aim at compromise.

➤ **Conciliation**

Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute use a conciliator, who meets with the parties separately in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement.

Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes party's needs, takes feelings into account and reframes representations. In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator.

➤ **Mediation**

Mediation, as used in law, is a form of alternative dispute resolution (ADR), a way of resolving disputes between two or more parties with concrete effects. Typically, a third party, the mediator assists the parties to negotiate a settlement. Disputants may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community and family matters.

The term "mediation" broadly refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential, possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process.

Mediators use various techniques to open, or improve, dialogue between disputants, aiming to help the parties reach an agreement. Much depends on the mediator's skill and training. As the practice gained popularity, training programs, certifications and licensing followed, producing trained, professional mediators committed to the discipline.

➤ **Arbitration**

Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (arbitrator), by whose decision they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable. Other forms of ADR include mediation and non-binding resolution by experts. Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. The use of arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts.

➤ **Litigation**

Litigation is a civil action brought in a court of law in which a plaintiff, a party who claims to have incurred loss as a result of a defendant's actions, demands a legal or equitable remedy. The defendant is required to respond to the plaintiff's complaint. If the plaintiff is successful, judgment is in the plaintiff's favor, and a variety of court orders may be issued to enforce a right, award damages, or impose a temporary or permanent injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes. Litigation may involve dispute resolution of private law issues between individuals, business entities or non-profit organizations.

2.3.7 Advance payment

An advance payment, or simply an advance, is the part of a contractually due sum that is paid or received in advance for goods or services, while the balance included in the invoice will only follow the delivery. It is called a prepaid expense in accrual accounting for the entity issuing the advance. Any type of payment that is made ahead of its normal schedule, such as paying for a good or service before you actually receive the good or service. Advance payments are sometimes required by sellers as protection against non-payment.

CHAPTER THREE

REVIEW OF PUBLIC PROCUREMENT RULE 2008

3.1 Contract Administration and Management

The contract administration and management shall include all administrative, financial, managerial and technical tasks to be performed by the Procuring Entity from contract award until it is successfully concluded or terminated and, payment is made and disputes or claims under it resolved.

The Procurement Entity shall apply professional ethics for adopting the contract administration and management techniques to ascertain the proper implementation of the signed contracts in line with the agreed conditions covering delivery, payments, quality control, contract implementation , liquidated damages and other related issues.

The Procuring Entity shall ensure that Goods, Works or Services to be procured conform to the technical requirements set forth in the procurement Contract, and for such purpose, the Procuring Entity may establish inspection and testing facilities, form inspection teams, enter into arrangements for the joint or collective use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

The main elements of contract administration and management may include –

- (a) Review and approval of the work plan;
- (b) Monitoring periodically progress in implementation of the contract, including determination of volume of works accomplished according to the work plan, and inspection and testing of quality aspects;
- (c) Management of Variation Orders, Contract suspension and termination, price revisions, Contract remedies such as imposition of liquidated damages, delayed payments, and disputes or claims settlement procedures;
- (d) Management of financial aspects and budget of Contract implementation including payments, cost analysis and accounting;
- (e) Organization and management of documentation related to contract implementation, and preparation of periodic reports on the implementation of Contract.

3.2 Administration and Management of Works Contract

For the purpose of controlling time, cost and quality, the Project Manager shall follow up the Work Programme and ensure that within the time stated in the contract -

(a) The Contractor submits to the Project Manager for approval of a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works;

(b) The Contractor submits to the Project Manager for approval of an updated Programme at specified intervals, being not longer than the period stated in the contract conditions; and

(c) The Contractor provides the Project Manager with an updated cash flow forecast when updating the Programme.

3.3 Administration of Goods Contracts

- The Project Manager shall check compliance with the technical specifications of Goods and arrange for inspection of its quality and quantity.
- The Procuring Entity may engage an external agent for the purpose of conducting pre-shipment inspection of Goods.
- The Project Manager shall check the compliance with delivery schedule and conditions and, arrange to settle delays.
- The Project Manager shall arrange timely payments following the contract terms and irrevocable letter of credits;
- The Project Manager shall ensure compliance of maintenance guarantee, after sales services and warranty obligations;
- The Project Manager shall ensure the application of the General Conditions of Contract and other terms specified in the Particular Conditions of Contract

3.4 Administration of Consultancy Services Contracts

For the purpose of controlling time, cost and quality; in the case of procurement of Services from inception to completion of the contract administration and management,, may include the following -

(a) Reviewing the quality of designs, studies and other Services provided for in the assignment;

(b) Monitoring the progress and timely completion of deliverables in the case of lump sum contracts and, utilization of person-months in the case of Time-based Contracts;

(c) Monitoring the Consultant's reports and the availability of the key personnel specified in the Appendices for all types of consultancy related Contracts;

(d) Providing timely comments and feedback to the Consultants reports in line with the provisions of the Contract;

(e) Adhering to the work plan and allocation of time for assigned activity;

(f) Providing timely assistance to the Consultant as per provision of the Contract;

(g) Paying monthly payments or payments against deliverables;

(h) Determining appropriateness of any changes to the scope of work;

(i) Monitoring delays, additional tasks and the need for extensions of Contract;

(j) Issues relating to indemnification; and

(k) General Conditions of Contract (GCC), Particular Conditions of Contract (PCC) and other terms as specified in the Request for Proposals (RFP).

3.5 Price Adjustment

Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts as certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amount. The formula indicated below applies:

$$P = A + B (I_m/I_o)$$

Where:

P is the adjustment factor

A and B are Coefficients specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract; and

I_m is the Index during the month the work has been executed and I_o is the Index prevailing twenty eight (28) days prior to the deadline for submission of Tender.

The Indexes to be used is as published by the Bangladesh Bureau of Statistics (BBS) on a monthly basis. In case not available, then other countries or authorities of the sources mentioned in Appendix to the Tender may be used.

3.6 Variation Order

The Procuring Entity may issue a Variation Order for Procurement of Works, physical Services from the original Contractor to cover any increase or decrease in quantities, including the introduction of new work items that are either due to change of plans, design or alignment to suit actual field conditions, within the general scope and physical boundaries of the contract.

The Procuring Entity may issue an Extra Work Order to cover the introduction of such new works necessary for the completion, improvement or protection of the original works which were not included in the original contract, on the grounds where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those usually encountered and generally recognized as inherent in the work or character provided for in the Contract.

Any cumulative Variation, beyond fifteen percent (15%) of the original contract price, shall be subject of another contract to be tendered out if the Works are separable from the original contract.

3.6.1 Preparation of a Variation Order

In claiming for any Variation or Extra Work Order, the Contractor shall deliver a written notice within seven (7) calendar days of being aware of the need for the Variation Order, giving full and detailed particulars of any extra cost in order that it may be investigated at that time, and failure to provide such notice shall constitute a waiver by the Contractor for any claim.

The preparation and submission of Variation or Extra Work Order shall be as follows -

(a) if the Project Manager deems it necessary that a Variation or Extra Work Order should be issued, he or she shall prepare the proposed order accompanied with the notices

submitted by the Contractor, the necessary plans, his or her computations as to the quantities of the additional Works involved per item indicating the specific locations where such Works are needed, the date of his or her inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his or her justifications for the need of such Variation or Extra Work Order, and shall submit the same to the Approving Authority.

(b) The Approving Authority, in accordance with DoFP, shall approve the Variation or Extra Work Order, after review and satisfaction with the justification, plans, quantities, and proposed unit cost of the new items of work involved if the Variation is not exceeding thirty (30) days from its preparation to approval, or shall arrange to obtain approval from the authority next higher than the authority who approved the original contract.

(c) The time for the processing of Variation and Extra Work Orders from the preparation up to the approval by the Approving Authority concerned shall be not exceeding thirty (30) days from its preparation to approval.

3.6.2 Costing of Variation or Extra Work

The Contractor shall be paid for additional work items as follows –

(a) If items of additional works are exactly the same or similar to those in the original contract, the applicable unit price of work items in the original contract shall be used for payment of those additional work items;

(b) For new items of works that are not included in the original Contract, the unit prices of the new work items shall be based on -

(i) The direct unit costs used in the original Contract for other items (e.g. unit cost of cement, steel rebar, formwork, labor rate, equipment rental, etc) as indicated in the Contractor's price breakdown of the cost estimate, if available; or

(ii) Fixed prices acceptable to both, the Procuring Entity and the Contractor, based on market prices;

(iii) The direct cost of the new work item based on (i) and (ii) above shall then be combined with the mark-up factor (i.e. taxes, overheads and profit) used by the Contractor in his Tender to determine the unit price of the new work item.

Request for payment by the Contractor for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which it claims payment and such request for payment shall be included with the Contractor's statement for a progress payment.

Under no circumstances shall a Contractor proceed to commence work under any Variation or Extra Work Order unless it has been approved by the Approving Authority.

The Head of the Procuring Entity may, in exceptions to the preceding Rule and subject to the availability of funds, authorize the immediate start of work under any Variation or Extra Work Order under any or all of the following conditions -

(a) In the event of an emergency where the carrying out of the work is required urgently to avoid causing damage to public services, or damage to life or property or to both;

(b) When time is of the essence provided that,

(i) The cumulative increase in value of work on the project which has not yet been duly approved does not exceed ten percent (10%) of the adjusted original Contract price.

(ii) Immediately after the start of work, the corresponding Variation Order or Extra Work Order shall be prepared and submitted for approval in accordance with Rule 36.

Payments for Works satisfactorily accomplished on any Variation or Extra Work Order may be made only after approval of the same by the appropriate authority.

3.7 Time Extension

The Procuring Entity shall extend the Intended Completion Date by Up to twenty percent (20%) of the original Contract time Above twenty percent (20%) of the original contract approval of HOPE shall be required, if a Compensation Event occurs or a Variation Order is issued which does not make it possible to complete the Works by the Intended Completion Date without the Contractor incurring additional cost. The Procuring Entity shall decide whether and by how much to extend the Intended Completion Date, within twenty-one (21) days of the Contractor asking the Project Manager for an extension.

The Contractor shall be entitled to an extension of the Intended Completion Date, if and to the extent that completion of the Works or any part thereof is or will be delayed by Compensation Events or a Variation or Extra Work Order.

The Project Manager shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the extension of Intended Completion Date.

Except in case of Force Majeure, a delay by the Contractor in the performance of its Completion obligations shall render the Contractor liable to the imposition of Liquidated Damages, unless an extension of Intended Completion Date is agreed upon.

3.8 Liquidated Damage

The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the PCC for each day that the Completion Date is later than the Intended Completion Date. Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. The total amount of liquidated damages shall not exceed the amount defined in the PCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

3.9 Defect Management

3.9.1 Identifying Defects

The Project Manager shall check the works executed by the Contractor and notify the Contractor of any Defects found. Such checking shall not relieve the Contractor from his or her obligations. The Project Manager may also instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

3.9.2 Testing

If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

3.9.3 Rejection of Works

If, as a result of an examination, inspection, measurement or testing, of Works it is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Works by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected Works subsequently complies with the Contract.

3.9.4 Remedial Work

Notwithstanding any test or certification, the Project Manager may instruct the Contractor to:

- (a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) Remove and re-execute any other work which is not in accordance with the Contract, and
- (c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

3.9.5 Correction of Defects

The Project Manager shall give notice to the Contractor, with a copy to the Procuring Entity and others concerned, of any Defects before the end of the Defects Liability Period, which begins at Completion Date, and is defined in the PCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

3.9.6 Uncorrected Defects

If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected by it, and the Contractor shall remain liable to pay the expenditures incurred on account of correction of such Defect.

3.10 Advance Payment

The Project Manager shall make Advance Payment, If so specified in the PCC, the Procuring Entity shall make advance payment to the Contractor of the amounts and by the dates stated in the PCC against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in an amount equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

The Contractor shall use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used for such specific purposes by supplying copies of invoices or other documents to the Project Manager.

The advance payment shall be repaid by deducting at proportionate rate from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

3.11 Final Account

3.11.1 Defects Liability Period

The Contractor shall submit with a detailed account of the total amount that the Contractor considers payable under the Contract to the Project Manager before the end of the Defects Liability Period.

3.11.2 Final Payment

The Project Manager shall certify the Final Payment within fifty six (56) days of receiving the Contractor's account if the payable amount claimed by the Contractor is correct and the corresponding works are completed.

3.11.3 Defects Liability Schedule

If it is not, the Project Manager shall issue within fifty six (56) days a Defects Liability Schedule that states the scope of the corrections or additions that are necessary.

3.11.4 Payment certificate

If the Final Account of Works unsatisfactory even after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

3.12 Force Majeure

3.12.1 Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

- (a) Which is beyond a Party’s control?
- (b) Which such Party could not reasonably have provided against before entering into the Contract;
- (c) Which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) Which is not substantially attributable to the other Party?

3.12.2 Element of Force Majeure

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) Rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war;
- (iii) Riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel;
- (iv) Munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radioactivity, and
- (v) Natural catastrophes such as cyclone, hurricane, typhoon, tsunami, and storm surge, floods, earthquake, landslides, fires, epidemics, quarantine restrictions, or volcanic activity;
- (vi) Freight embargoes;
- (vii) Acts of the Government in its sovereign capacity.

3.12.3 Notice of Force Majeure

(i) If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the

performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

(ii) The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

(iii) Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

3.12.4 Duty to Minimize Delay

(i) Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

(ii) A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

3.12.5 Consequences of Force Majeure

(i) The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

(ii) The Procuring Entity may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to force majeure as defined in the contract.

(iii) Delivery made either upon the lifting or the expiration of the suspension order. However, if the procuring Entity terminates the contract, resumption of delivery cannot be done.

(iv) Head of Procuring Entity determines the existence of a force majeure that will be basis of the issuance of suspension of order.

(v) Adjustments in the delivery or contract schedule and/or contract price, including any need to modify contract.

3.13 Termination of Contract

3.13.1 Termination for Default

(i) The procuring entity shall terminate this Contract for default when any of the following conditions attends its implementation:

(a) Outside of force majeure, the Supplier fails to deliver or perform any or all of the goods within the period(s) specified in the contract, or within any extension

thereof granted by the procuring entity pursuant to a request made by the Supplier prior to the delay;

(b) As a result of force majeure, the Supplier is unable to deliver or perform any or all of the goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the procuring entity stating that the circumstance of force majeure is deemed to have ceased; or

(c) The Supplier fails to perform any other obligation under the Contract;

(d) If the Supplier, in the judgment of the Procuring Entity has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract;

(e) When deductible amount due to liquidated damage reaches its maximum.

(ii) Termination of a contract for default is without prejudice to other remedies available to the Procuring Entity for breach of contract, such as payment of liquidated and other damages, if there are grounds for the latter.

(iii) In the event the Procuring Entity terminates the Contract in whole or in part, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

(iv) In the event as stated under GCC Clause 42.1(d), the Procuring Entity shall,

(a) Terminate the Supplier's employment under the Contract and cancel the contract, after giving 14 days notice to the Supplier and the provisions of Clause 42 shall apply.

(b) Declare, at its discretion, the concerned Person to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time.

3.13.2 Termination for Insolvency

The procuring entity shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the procuring entity and/or the Supplier.

3.13.3 Termination for Convenience

(i) The procuring entity, by written notice sent to the supplier, may terminate this Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring Entity's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.

(ii) Any of the following circumstances may constitute sufficient grounds to terminate a contract for conveniences:

(a) If Physical and economic conditions have significantly changed so as to render the contract no longer economically, financially or technically feasible, as determined by the Head of Procuring Entity;

(b) The Head of Procuring Entity has determined the existences of conditions that make contract implementation impractical and/or unnecessary, such as, but not limited to , fortuitous event/s, change in laws and government policies;

(c) Funding for the contract has been withheld or reduced;

(d) Any circumstances analogous to the foregoing.

(iii)The goods that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the procuring entity at the contract terms and prices. For goods not yet performed and/or ready for delivery, the procuring entity may elect:

(a) To have any portion delivered and/or performed and paid at the contract terms and prices; and/or

(b) To cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.

3.13.4 Procedures for Termination of Contracts

The following provisions shall govern the procedures for termination of this Contract as stated under GCC Clauses 42, 43 and 44:

(a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Procuring Entity shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;

(b) Upon recommendation by the Procuring Entity, the Head of the procuring entity shall terminate this Contract only by a written notice to the Supplier conveying the termination of this Contract. The notice shall state:

i. That this Contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;

ii. The extent of termination, whether in whole or in part;

iii. An instruction to the Supplier to show cause as to why this Contract should not be terminated; and

iv. Special instructions of the procuring entity, if any.

(c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;

(d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the procuring entity a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the procuring entity shall issue an order terminating this Contract;

(e) The procuring entity may, at any time before receipt of the Supplier's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;

(f) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the procuring entity shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and

(g) The Head of the procuring entity may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the procuring entity.

3.14 Dispute Resolution

3.14.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Completion Time and/or any additional payment, under any Clause of these Conditions or otherwise in

connection with the Contract, the Contractor shall give notice to the Procuring Entity, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, as and not later than twenty eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of twenty eight (28) days, the Intended Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim.

Within forty two (42) days after the Contractor became aware or should have become aware of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed, for settlement.

3.14.2 Settlement of Disputes

3.14.2.1 Amicable settlement

The procuring Entity and the Contractor shall use their best efforts to settle amicably all possible disputes arising out of or in connection with this Contract or its interpretation.

3.14.2.2 Adjudication

- If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within fourteen (14) days of notification of the Project Manager's decision in writing.
- The Adjudicator named in the PCC is jointly appointed by the parties. In case of disagreement between the parties, the Appointing Authority designated in the PCC shall appoint the Adjudicator within fourteen (14) days of receipt of a request from either party.
- The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it.
- The Contractor shall make all payments (fees and reimbursable expenses) to the Adjudicator, and the Procuring Entity shall reimburse half of these fees through the regular progress payments.
- Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the

Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor the Adjudicator shall be designated by the Appointing Authority within fourteen (14) days of receipt of a request from either party.

3.14.2.3 Arbitration

- If the parties are unable to reach a settlement within twenty-eight (28) days of the first written correspondence on the matter of disagreement, then either party may give notice to the other party of its intention to commence arbitration.
- The arbitration shall be conducted in accordance with the Arbitration Act (Act No 1 of 2001) of Bangladesh as at present in force and in the place shown in the PCC.

3.15 Conflict of Interest

(1) Applicants shall have an obligation to disclose any situation of actual or potential conflict of interest that impacts their capacity to serve the best interest of the Client or that may reasonably be perceived as having this effect and failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract as indicated in the cases in the Table appended with Part A (Consultants' Conflicts of Interest: Range of Possible Cases) of Schedule IX .

(2) The Consultant, including any of its affiliates or associates, in deference to the requirements that the Consultant provides professional and objective advice and at all times hold the Client's interests paramount, shall strictly avoid conflicts with other assignments or its own corporate interests, and act without any consideration for award of a future work.

(3) If any Person has earlier been engaged by a Procuring Entity to supply Goods, perform Works or provide physical Services for a project, then that Person and any of its affiliates shall be disqualified from providing consulting Services related to those Goods, Works or Services.

(4) If any Person hired to provide consulting Services for the preparation or implementation of a project, then that Person and any of its affiliates, shall be disqualified from subsequently supplying Goods, providing consulting Services, performing physical Services or Works resulting from or directly related to the Person's earlier consulting Services.

(5) A Consultant, its Personnel and Sub consultants or any of its affiliates shall not be hired for any assignment that may be in conflict with identical assignment of the Consultant to be performed for the same or for another Procuring Entity.

(6) A Consultant, its Personnel and Sub consultant that have a business relationship with a member of the Client's staff involved in the procurement proceedings may not be

awarded a Contract, unless the conflict stemming from this relationship has been addressed adequately throughout the selection process of the Consultant.

(7) Procuring Entity officials, who have an interest, directly or indirectly, with a firm or individual that is Tendering or has Tendered for a Procurement proceedings of that Entity shall declare its relationship with that firm or individual and consequently not participate in any proceedings concerned with that specific Procurement at any stage including from when the specifications are written and qualification criteria are established up to the Supply of Goods or performance of the Works are completed and, until all contractual obligations have been fulfilled.

CHAPTER FOUR

REVIEW OF WORLD BANK PROCUREMENT GUIDELINE

4.1 Price Adjustment

Bidding documents shall state either that

- (a) Bid prices will be fixed or
- (b) That price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel.

Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within 18 (eighteen) months, but shall be included in contracts which extend beyond 18 (eighteen) months. The bidding documents for contracts of shorter duration may also include a similar provision for price adjustment when future local or foreign inflation is expected to be high. However, it is standard practice to obtain firm prices for some types of equipment regardless of the delivery time and, in such cases, price adjustment provisions are not needed.

Prices shall be adjusted by the use of a prescribed formula which breaks down the total price into components that are adjusted by price indices specified for each component the formula and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formulae, to avoid incorrect adjustment. Under exceptional circumstances, bidding documents may provide for price adjustment on the basis of documentary evidence (including actual invoices) provided by the Supplier or Contractor.

4.2 Variation Order

4.2.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction. Each Variation may include:

- Changes to the quantities of any item of work included in the Contract,
- Changes to the quality and other characteristics of any item of work,
- Changes to the levels, positions and/or dimensions of any part of the Works,
- Omission of any work unless it is to be carried out by others,
- Any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- Changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

4.2.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which will, if adopted,

- (i) Accelerate completion,
- (ii) Reduce the cost to the Employer of executing, maintaining or operating the Works,
- (iii) Improve the efficiency or value to the Employer of the completed Works, or
- (iv) Otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Variation Procedure.

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) The Contractor shall design this part,
- (b) Contractor's General Obligations shall apply, and
- (c) If this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee,

which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:

- (i) Such reduction in contract value, resulting from the change, excluding Adjustments for Changes in Legislation and Adjustments for Changes in Cost, and
- (ii) The reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

4.2.3 Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) A description of the proposed work to be performed and a programme for its execution,
- (b) The Contractor's proposal for any necessary modifications to the programme and to the Time for Completion, and
- (c) The Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated, unless the Engineer instructs or approves otherwise in accordance with this Clause.

4.3 Time Extension

4.3.1 Extension of Time for Completion

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion for Taking Over of the Works and Sections clause is or will be delayed by any of the following causes:

- (a) A Variation or other substantial change in the quantity of an item of work included in the Contract,

- (b) A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) Exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer.

4.3.2 Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

Then this delay or disruption will be considered as a cause of delay under Extension of Time for Completion Sub-Clause.

4.4 Liquidated Damage or Delay Damage

Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works, or failure of the goods, works, and non-consulting services to meet performance requirements would result in extra cost, or loss of revenue, or loss of other benefits to the Borrower. The liquidated damage termed as Delay Damage.

If the Contractor fails to comply with time for completion, the Contractor shall subject to notice under Sub-Clause Employer's Claims to pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated

in the Taking-Over Certificate. However, the total amount due shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

4.5 Defect Management

4.5.1 Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) Complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) Execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section.

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

4.5.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause Completion of Outstanding Work and Remedying Defects shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) Any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) Failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by the Employer, and Variation Procedure shall apply.

4.5.3 Extension of Defects Notification Period

The Employer shall be entitled to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended, the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

4.5.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause Cost of Remedying Defects, the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Determinations Sub-Clause; or
- (c) If the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

4.5.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

4.5.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, for the cost of the remedial work.

4.5.7 Contractor to Search

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor, the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Determinations Sub-Clause and shall be included in the Contract Price.

4.5.8 Performance Certificate

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

4.6 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilization and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-

Clause. The total advance payment, the number and timing of installments, and the applicable currencies and proportions, shall be as stated in the Contract Data.

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

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first installment after receiving a Statement and after the Employer receives

- (i) the Performance Security and
- (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

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

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the, as follows:

- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortization rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Termination by Employer Clause, Suspension and Termination by Contractor Clause or Force Majeure Clause, the whole of the balance then outstanding shall immediately become due and in case of termination under Termination by Employer Clause, except for Employer's Entitlement to Termination for Convenience Sub-Clause, payable by the Contractor to the Employer.

4.7 Final Payment

4.7.1 Payment

The Employer shall pay to the Contractor:

- (a) The first installment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Performance Security Sub-Clause and Advance Payment Sub-Clause, whichever is later;
- (b) The amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) The amount certified in the **Final Payment** Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Termination by Contractor Sub-Clause.

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

4.7.2 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a 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 within 28 days from receipt of said draft 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. This agreed statement is referred to in these Conditions as the “Final Statement”.

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved by Obtaining Dispute Board’s Decision or Amicable Settlement, the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

4.7.3 Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and discharge, the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:

- (a) the amount which he fairly determines is finally due, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate, the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

4.8 Force Majeure

4.8.1 Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

- Which is beyond a Party’s control,
- Which such Party could not reasonably have provided against before entering into the Contract,
- Which, having arisen, such Party could not reasonably have avoided or overcome, and
- Which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) Rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) Riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel,
- (iv) Munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity, and
- (v) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

4.8.2 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

4.8.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

4.8.4 Consequences of Force Majeure

If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to:

- (a) an extension of time for any such delay, if completion is or will be delayed, and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Definition of Force Majeure Sub-Clause and, in sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy.

4.8.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

4.8.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given.

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

4.8.7 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) The sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

4.9 Termination of Contract

4.9.1 Termination for Default

(a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

(i) If the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34;

(ii) If the Supplier fails to perform any other obligation under the Contract; or

(iii) If the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.

(b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

4.9.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

4.9.3 Termination for Convenience

(a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

(b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

(i) To have any portion completed and delivered at the Contract terms and prices; and/or

(ii) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

4.9.4 Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
 - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) 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, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favor or disfavor to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

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

The Contractor shall then leave the Site and deliver any required Goods, all Contractors' Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

4.9.5 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice in respect of a failure to comply with Employer's Financial Arrangements,
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,

- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time within which payment is to be,
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Contract Agreement,
- (f) a prolonged suspension affects the whole of the Works, or
- (g) the Employer 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.
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfillment of the conditions for the Commencement of Works under Commencement of Works Sub-Clause.

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

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

4.10 Dispute Resolution

The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the Bank requires that Borrowers use this type of arbitration in contracts for the procurement of goods, works, and non-consulting services unless the Bank has specifically agreed to waive this requirement for justified reasons such as equivalent national regulations and arbitration procedures, or the contract has been awarded to a bidder from the Borrower's country. The Bank shall not be named arbitrator or be asked to name an arbitrator. In case of works contracts, supply and installation contracts, and single responsibility (including turnkey) contracts, the dispute settlement provision shall include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

4.10.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) This fully detailed claim shall be considered as interim;
- (b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in

relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

4.10.2 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision. The Parties shall appoint a DB by the date stated in the Contract Data. The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons (“the members”), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the Parties have not jointly appointed the DB 21 days before the date stated in the Contract Data and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge shall have become effective.

4.10.3 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) The Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Appointment of the Dispute Board Sub-Clause,
- (b) Either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons by such date,
- (c) The Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or
- (d) The Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

Then the appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

4.10.4 Obtaining Dispute Board's Decision

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, either Party may refer the

dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party.

In either event, this Notice of Dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Failure to Comply with Dispute Board's Decision Sub-Clause and Expiry of Dispute Board's Appointment Sub-Clause, neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

4.10.5 Amicable Settlement

Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree

otherwise, the Party giving a Notice of Dissatisfaction should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

4.10.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) if the contract is with foreign contractors,
 - (i) for contracts financed by all participating Banks except under sub-paragraph (a) (2) below: international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules
- (b) If the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Law and Language Sub-Clause.

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

Neither Party shall be limited in the proceedings before the arbitrators to the evidence nor did arguments previously put before the DB to obtain its decision, or to the reasons for

dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

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

4.10.7 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a final and binding DB decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to. Sub-Clause of Obtaining Dispute Board's Decision and Sub-Clause of Amicable Settlement shall not apply to this reference.

4.10.8 Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

- (a) Obtaining Dispute Board's Decision Sub-Clause and Amicable Settlement Sub-Clause shall not apply, and
- (b) The dispute may be referred directly to arbitration.

4.11 Conflict of Interest

Bank policy requires that a firm participating in a procurement process under Bank-financed projects shall not have a conflict of interest. Any firm found to have a conflict of interest shall be ineligible for award of a contract.

A firm shall be considered to have a conflict of interest in a procurement process if:

- (a) Such firm is providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and built contract; or

(b) Such firm submits more than one bid, either individually or as a joint venture partner in another bid, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. However, this does not limit the inclusion of a firm as a sub-contractor in more than one bid. Only for certain types of procurement, the participation of a Bidder as a sub-contractor in another bid may be permitted subject to the Banks' no objection and as allowed by the Bank's Standard Bidding Documents applicable to such types of procurement; or

(c) Such firm (including its personnel) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who:

(i) Are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or

(ii) Would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract; or

(d) Such firm does not comply with any other conflict of interest situation as specified in the Bank's Standard Bidding Documents relevant to the specific procurement process.

CHAPTER FIVE

ANALYSIS AND FINDING

5.1 Analysis of Price Adjustment

According to PPR 2008 price shall be adjusted for fluctuation in the cost of inputs only if provided in the PCC. Adjustment factor is calculated by using a formula. The formula indicated below applies:

$$P = A + B (I_m/I_o)$$

Where:

P is the adjustment factor

A and B are Coefficients specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract; and

I_m is the Index during the month the work has been executed and I_o is the Index prevailing twenty eight (28) days prior to the deadline for submission of Tender.

Applicability of price adjustment in terms of length of the project is not given in PPR. For short project, cost fluctuation may be minor effect on overall project cost. Adjustment factor more or less time dependent, it could be high or low from the base date (twenty eight (28) days prior to the deadline for submission of Tender). Adjustment is made to each payment before deducting advance payment is given.

According to World Bank Procurement Guideline price adjustment calculated by prescribed formula stated prior in the contract document. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within 18 (eighteen) months, but shall be included in contracts which extend beyond 18 (eighteen) months. The bidding documents for contracts of shorter duration may also include a similar provision for price adjustment when future local or foreign inflation is expected to be high. There is a provision of correction factor in the formula to avoid unnecessary incorrect adjustment. Prices shall be adjusted by breaking down the total price into components that are adjusted by price indices specified for each component.

So price adjustment is more accurate and flexible according to World Bank Procurement Guideline.

5.2 Analysis of Variation Order

According to PPR 2088 variation order is made if, Procurement of Works, physical Services from the original Contractor to cover any increase or decrease in quantities, including the introduction of new work items that are either due to change of plans, design or alignment to suit actual field conditions, within the general scope and physical boundaries of the contract. If any cumulative variation is beyond fifteen percent (15%) of the original contract price is not allowable, then separate contract should be made. When the variation is made according to PPR participation of the contractor is low except fixing the unit price.

According to World Bank Procurement Guideline, area of variation is almost defined. Each Variation may include:

- Changes to the quantities of any item of work included in the Contract,
- Changes to the quality and other characteristics of any item of work,
- Changes to the levels, positions and/or dimensions of any part of the Works,
- Omission of any work unless it is to be carried out by others,
- Any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- Changes to the sequence or timing of the execution of the Works.

In WB guideline there is no provision maximum allowable range of variation in a single contract. WB allows the contractor's active participation to the change. The Contractor may, at any time, submit to the Engineer a written proposal which will, if adopted,

- (i) Accelerate completion,
- (ii) Reduce the cost to the Employer of executing, maintaining or operating the Works,
- (iii) Improve the efficiency or value to the Employer of the completed Works, or
- (iv) Otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Variation Procedure.

5.3 Analysis of Time Extension

According to PPR 2088, major causes of extension of intended time of completion of the project are variation order and force majeure. The Procuring Entity shall extend the Intended

Completion Date by Up to twenty percent (20%) of the original Contract time Above twenty percent (20%) of the original contract approval of HOPE shall be required, if a Compensation Event occurs or a Variation Order is issued which does not make it possible to complete the Works by the Intended Completion Date without the Contractor incurring additional cost.

According to World Bank Procurement Guideline, main causes of extension of intended completion time are follows:

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

Except the causes other procedure of extension of intended completion of project time are almost same.

5.4 Analysis of Liquidated Damage

According to PPR 2008, liquidated damage is a provision of compensation because of delay provided by the contractor to check the delay. The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the PCC for each day that the Completion Date is later than the Intended Completion Date. Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. The total amount of liquidated damages shall not exceed the amount defined in the PCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the

Contractor's liabilities. In case of, termination of the contract before the scheduled time of completion, what measures shall be taken is not mentioned in PPR.

According to World Bank Procurement Guideline, provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works, or failure of the goods, works, and non-consulting services to meet performance requirements would result in extra cost, or loss of revenue, or loss of other benefits to the Borrower. The liquidated damage termed as Delay Damage. These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

5.5 Analysis of Defect Management

According to PPR 2008, cost of uncorrected defect is provided by the contractor. The Project Manager shall give notice to the Contractor, with a copy to the Procuring Entity and others concerned, of any Defects before the end of the Defects Liability Period, which begins at Completion Date, and is defined in the PCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected. There is no provision of issuing performance certificate to the contractor after successfully completion of the project including correcting all defects.

According to World Bank Procurement Guideline, If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor, the Employer may get three options:

- (a) Carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) Require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Determinations Sub-Clause; or
- (c) If the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in

respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part, plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

Further test provision, if the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

Performance certificate provision, the Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects.

5.6 Analysis of Advance Payment

Advance Payment is an interest free loan shall make by the Project Manager (PPR'2008) or Employer (WB Procurement Guideline) to the contractor for equipment, plant, material, mobilization and cash flow support to the contractor against unconditional at bank guarantee. The amount of bank guarantee should cover the amount of advance payment.

According to PPR bank guarantee should remain effective until contractor repay the advance payment. But according to World Bank procurement guideline, Bank Guarantee should cover additional 28 days after repayment of advance payment by contractor. According to PPR contractor should supply the copy of invoice or other document as the proof of authenticity. But in World Bank guide line there is no such provision.

In World Bank guideline there is a provision of issuing Interim Payment Certificate which increase the transparency of the whole process. If the advance payments are not repaid prior to the issue of the Taking over Certificate for the work or prior to any type of termination whole of the balance shall be payable by the contractor to the employer. But in PPR there is no mention of any measure if advance payments are not repaid. There is no specific clause for

fixing the amount of advance payment and applicability of advance payment in these two guidelines.

5.7 Analysis of Final Payment

In PPR'2008, contractor will submit detail of final payment of total amount of contract to the project manager within 56 days of receiving the final account payment would be made base on two conditions, such as:

1. if contractor's claim is correct
2. Total contracted works are completed.

In breach of any condition PM will issue a Defect Liability Schedule within 56 days.

In WB procurement guideline, the amount certified in the Final Payment Certificate within after the employer receives this payment certificate or at a time when bank's loan or credit is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with termination by contractor. If any dispute exist at first it need to be resolved by Dispute Board or by amicable solution. Final Payment Certificate will represent the final undisputed amount of payment and finally remaining dues.

5.8 Analysis of Force Majeure

According to both PPR'2008 and WB procurement guideline definition, notice, element of force majeure and duty to minimize delay are same. But consequence and management of force majeure are slightly different in two guidelines. In PPR, supplier shall be free from the liability of forfeiture of performance security, liquidated damages and termination for default as a result of any force majeure event that embedded in the contract. The procuring entity may suspend the delivery or contract implementation wholly or partly by written order for a certain period of time. HOPE will decide the existence of a force majeure which going to be the basis for suspension order. Two basic terms will come under adjustment which are delivery/contract schedule and contract price.

In WB Guideline, consequence of force majeure will be mitigated /minimized by provision of time extension and replacement of cast those are not covered by the insurance policy. If the execution of substantially all the works in progress is prevented for a continuous period of 84 days by reason of force majeure of which notice has been given or for multiple periods which total more than 140days due to the same notified force majeure, then either party may give to the other party a notice of termination of the contract. In this event termination shall take

effect 7 days after the notice is given. Then engineer shall issue the certificate of payment for completed work assessing the value of work. When termination executed both parties are released from their contractual obligations.

5.9 Analysis of Termination of Contract

In both guidelines there are three basic types of termination

- Termination for default
- Termination for insolvency
- Termination for convenience

Contract also could be terminated because of force majeure procedure of termination is slightly different in PPR and WB procurement guideline. But in PPR 2008 there is no provision for termination of contract by the supplier.

In PPR, HOPE will issue a notice at termination by the recommendation of PE. Notice of termination will clearly mention the ground of termination, extent of termination whether in whole or in part, show cause to the contractor and special instruction to the PE. The Notice of Termination will be accompanied by the Verified Report submitted by PE. Then contractor should give reply within seven (07) calendar days of receiving notice otherwise termination goes into inaction. If contractor answers properly the show cause, it should accompany with Verified Position Paper. Then HOPE will issue a Notice of Decision to the contractor. HOPE could form a contract Termination Review Committee (CTRC) to assist HOPE. In WB guideline contract termination is easier than PPR. Process more or less similar but here contractor also could terminate contract if,

- (i) the Contractor does not receive the reasonable evidence within 42 days after giving notice in respect of a failure to comply with Employer's Financial Arrangements,
- (j) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (k) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time within which payment is to be,
- (l) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,

- (m) the Employer fails to comply with Contract Agreement,
- (n) a prolonged suspension affects the whole of the Works, or
- (o) the Employer 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.
- (p) The Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfillment of the conditions for the Commencement of Works under Commencement of Works Sub-Clause.

5.10 Analysis of Dispute Resolution

In PPR the main considerations of dispute are,

- a) Extension of the completion time.
- b) Additional Payment.

In both guideline dispute settlement procedure are more or less same base or three basic steps but steps are different. In PPR'2008 dispute settlement comprise following steps:

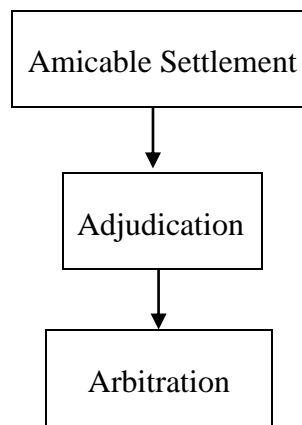


Figure 5.1: Process of Dispute settlement in PPR 2008.

In **Amicable settlement**, PE and contractor use their best effort to settle amicably all possible arising dispute out of or in connection with the contract.

Adjudication is come in forth when arising dispute does not resolve by amicable settlement. PE and contractor jointly appoint adjudicator but this provision must be stated in the contract (e.g. stated in Particular Conditions of Contract). Payment of the total process of adjudication will jointly carried out by PE and the contractor (Half PE and half contractor).Adjudicator

shall give their decision in writing. But if either party dissatisfy with the decision they are open to go arbitration.

The **Arbitration** shall be conducted in accordance with the Arbitration Act 2001 of Bangladesh which must be stated in PCC.

According to World banks procurement guideline provision of dispute resolution should be stated in the contract .Contractor will claim to the engineer with detail of the arising dispute or variation. If the claim is rejected by the engineer either partly can go for dispute resolution procedure which consist three basic steps:

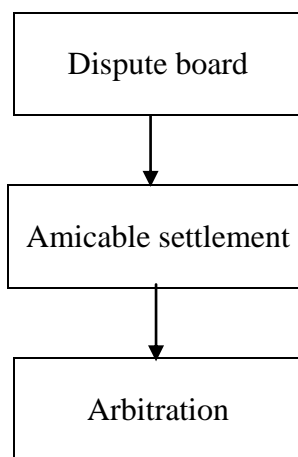


Figure 5.2: Process of Dispute settlement in WB Procurement Guideline.

Dispute Board (BD) consists of three members. First two members are nominated by each party and agreed by others. Then first two members will recommend the third member who is considered as the chairman with respect to the agreement of two parties. Each member of Dispute Board should be fluent in the language of communication and should have professional experience in settling this type of case. Remuneration of the member of Dispute Board is jointly paid by two disputing parties.

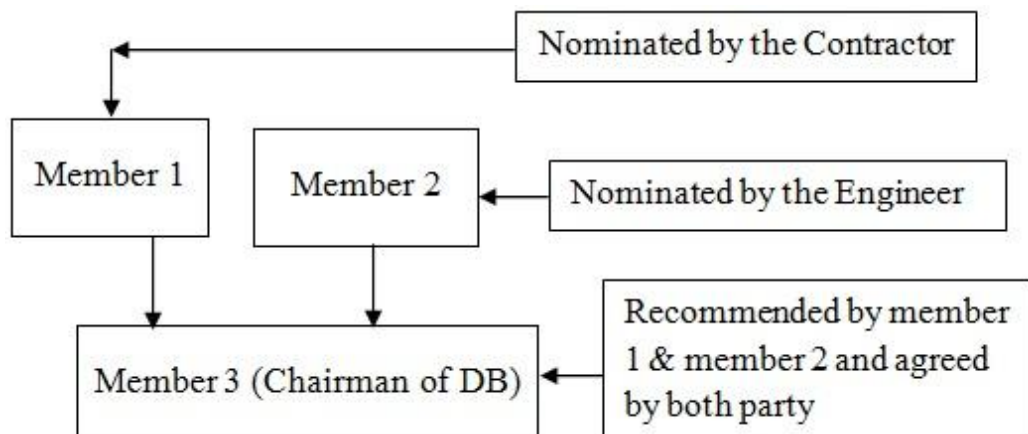


Figure 5.3: Formation of Dispute Board

Decision of Dispute Board shall be binding for both party, but if either party is dissatisfied with Dispute Board's decision, then either party may give a Notice of Dissatisfaction to the other party indicating its dissatisfaction and intention to commence arbitration.

In **Amicable Settlement**, both parties try to settle the dispute amicably before commencement of arbitration.

Arbitration comes in forth if any dispute does not settle by the decision of Dispute Board. Following applicable laws and forums to conduct arbitration are:

- ❖ Contract with Foreign Contractor
 - ✓ Any International Arbitration Institution designated in the contract.
 - ✓ The arbitration rules of United Nations Commission on International Trade Law (UNCITRAL).
 - ✓ International Chamber Commerce's rules of arbitration.
- ❖ Contract with Domestic Contractor

Arbitration conducted in accordance with the laws of the Employer's country.

CHAPTER SIX

CONCLUSION

6.1 Conclusion

This comparative study covers eleven contract management issues according to the Public Procurement Rule 2008 and World Bank's Procurement Guideline, standard Tender Document of both PPR 2008 and Standard Bidding Documents of World Bank are also use to complete this study. These two guidelines are almost uniform and same in nature except few variations. Both guidelines provide almost the same measures to handle contract management issues after signing of contract. In case of calculating Price Adjustment World Bank uses correction factor which is different for different contractual situation, this provision makes the calculation more accurate. In case of advance payment WB issues interim payment certificate which increase transparency in payment method. But there is no provision of interim payment certificate in PPR 2008. Process of Dispute resolution is almost similar in two guidelines but in World Bank's Procurement Guideline it has a provision of Dispute Board before Amicable Settlement. Provision of Dispute Board makes the settlement process transparent and accurate. In Bangladesh public sector officials have to work with both of these guidelines. So they got some advantages because of similarities.

6.2 Recommendations

This study could not cover various dimensions of contract management because some constrains. Limitation of time was the prime factor of the depth of the study. For further improvement, following recommendations are drawn based on the study:

- A real case study could be analyzed based on these contract management issues, in which the project is managed in accordance of both Public Procurement Rule 2008 and World Bank's Procurement Guideline.
- Only eleven issues are covered in this study, so there are possibilities of further study based on several other contract management issues with view of different method of contract.
- The finding of this study can be used for further topic related studies.
- In depth analysis of short comings of the Public Procurement Rule 2008 could be studied in future for remedy of issues.

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