
**VOLUME 0 MODEL CONTRACT
DOCUMENT FOR MAJOR
WORKS AND
IMPLEMENTATION
REQUIREMENTS**

**SECTION 1 MODEL CONTRACT
DOCUMENT FOR
HIGHWAY WORKS**

PART 7

**MODEL CONTRACT DOCUMENT
FOR ENGINEERING AND
CONSTRUCTION CONTRACT -
ENGLAND - AMENDMENT NO 1**

SUMMARY

This Amendment replaces the existing Chapter 10 of the ECC Model Contract Document.

INSTRUCTIONS FOR USE

1. Remove the existing Chapter 10 and archive as appropriate.
2. Insert the new Chapter 10 covered by this amendment.
3. Enter the details of Amendment No 1 on the Registration of Amendments Sheet, sign and date to confirm that the Amendment has been incorporated.
4. Archive this sheet as appropriate.

Note: A quarterly index with a full set of Volume Contents Pages is available separately from The Stationery Office Ltd.

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PART 7

**MODEL CONTRACT DOCUMENT FOR
ENGINEERING AND CONSTRUCTION
CONTRACT - ENGLAND**

SUMMARY

This is a Model Contract Document (MCD) for use with the Engineering and Construction Contract (ECC) published by the Institution of Civil Engineers. The model provides a set of documents which may be used with any of ECC's six main pricing options.

INSTRUCTIONS FOR USE

This is a new document to be incorporated in the manual.

1. This is a new document to be inserted into the manual.
2. Insert this Part 7 into Volume 0 Section 1 of MCHW.
3. Archive this sheet as appropriate.

Note: A quarterly index with a full set of Volume Contents Pages is available separately from The Stationery Office Ltd.



THE HIGHWAYS AGENCY

Model Contract Document for Engineering and Construction Contract - England

Summary:

This is a Model Contract Document (MCD) incorporating revised Chapter 10 for use with the Engineering and Construction Contract (ECC) published by the Institute of Civil engineers. The model provides a set of documents which may be used with any of ECC's six main pricing options.

REGISTRATION OF AMENDMENTS

Amend No	Page No	Signature & Date of incorporation of amendments	Amend No	Page No	Signature & Date of incorporation of amendments

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**MODEL CONTRACT DOCUMENT FOR
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ACKNOWLEDGEMENT

The Highways Agency acknowledges with many thanks permission from Thomas Telford to reproduce certain copyright script within this model contract document, in particular script appearing in the documents within chapters 8 and 9 above.

1. GUIDANCE NOTES

SECTION I

Introduction

1. This is a Model Contract Document (MCD) for use with the Engineering and Construction Contract (ECC) published by the Institution of Civil Engineers. The model is issued by the Highways Agency as part of its Manual of Contract Documents for Highways Works. The model provides a set of documents which may be used with any of ECC's six main pricing options, as follows:

- Option A: Priced contract with activity schedule
- Option B: Priced contract with bill of quantities
- Option C: Target contract with activity schedule
- Option D: Target contract with bill of quantities
- Option E: Cost reimbursable contract
- Option F: Management contract

2. All options share the same core conditions of contract but specific clauses are added to suit individual payment arrangements. Most of the Highways Agency's contracts placed under ECC are expected to fall within options A or B which reflect the primary pricing methods. Where option A is used each tenderer is required to produce an activity schedule to suit its proposed work programme and to state lump sum amounts against each activity. Discretion is left to the tenderer to break up work into activities unless the Employer specifies a particular activity. As a bill is not provided each tenderer has to calculate quantities from the design data provided in order to estimate the cost of the work. The bill under option B is a traditional list of work items and quantities which are priced by tenderers.

3. The target cost options C and D allow financial risks to be shared between the Contractor and the Employer. It is normally used where requirements are not fully definable, where work is innovative requiring intensive resources or where anticipated risks are large. Tenderers submit a target price which includes an estimate of direct costs, defined as Actual Cost, plus their fee comprising overheads and profit. During the contract the Contractor is paid Actual Cost plus fee which is defined as the Price for Work Done to Date (PWDD). At the end of the contract the Contractor is paid (or he pays the Employer) his share of the difference between the final target price (adjusted to take account of any compensation events) and the final PWDD in accordance with a share formula stated in the Contract Data.

4. The cost reimbursable option E is normally used where requirements are inadequately defined. All financial and technical risks are held by the Employer and the Contractor is paid Actual Cost plus his tendered fee. The management option F is based on similar principles but risk allocation can be varied to suit project requirements.

5. ECC may be used for a wide range of civil engineering and construction projects. However, to improve its flexibility for use by the Highways Agency a number of additional "Z" clauses have been developed and included as a separate list under Chapter 10. Some of these clauses are mandatory but most are optional and may be included at the project manager's discretion, depending on the nature and circumstances of individual projects.

6. The list of additional "Z" clauses cover various quality initiatives such as the following:

- naming key personnel
- naming subcontractors
- quality assurance (incl. quality plan)
- extended defects period
- transfer of ground and Statutory Undertakers' risks

7. It also includes clauses for lane rental charging and bonus payments for use with “fast-track” maintenance schemes, as follows:

- bonus for early Completion
- bonus for timely daily clearance of carriageway
- lane rental charge for late Completion
- lane rental charge for late daily clearance of carriageway
- lane rental charge for maintenance work

8. A guidance note explaining some of the “Z” clauses is in Section II below.

SECTION II

9. These notes are for use when preparing ECC contracts. A number of additional “Z” clauses are listed in Chapter 10 which are required to be incorporated into Contract Data Part One. Some of the “Z” clauses are mandatory which must be included in every contract but many are optional over which the project manager exercises his/her judgement. An index of “Z” clauses is in Chapter 10.

10. Some of the “Z” clauses include new value-for-money initiatives which are intended to lead to a number of benefits in terms of more effective and efficient project management, more durable and better quality workmanship, better forecasting and control of budgets, and real long-term value-for-money improvements. Some further background notes are below.

Naming key personnel

11. Project Managers now have discretion to require tenderers to name key personnel and/or subcontractors in tender submissions. The decision to do so must be based on the nature and circumstances of each individual project. Clearly, projects of value £1m will be more suitable candidates than those below this level.

12. The smooth running and success of a project depends on both the quality and experience of the contractor’s team and on its working relationship with the client. By requiring named key personnel, the evaluation team will be able to evaluate strengths and weaknesses of team members in terms of training, discipline and past experience of similar work and make a judgement on the effectiveness and success of the proposed team for a specific project.

Naming subcontractors

13. The main objective behind naming subcontractors at tender stage is to improve quality of both workmanship and long-term durability of built works. By requiring named subcontractors, the evaluation team will have greater control over the project with the opportunity of rejecting companies not considered suitable for the area of work specified. It will stop temptation by a contractor after award of contract to conduct “Dutch” auctions between subcontractors which drives down the sub-price to an unrealistic level and obliges a subcontractor to either skimp on quality or seek inflated claims, both adverse effects for the client.

Payment Profiling

14. Payment Profiling is a contractual device, applicable to all forms of contract, to allow the Agency to control its expenditure during set periods of the contract. In practical terms it means capping total annual payments, although monthly payments within a payment period may also be capped. Payment Profiling is not intended to reduce a contractor’s freedom in deploying and optimising resources, but it does mean that payments will be made at a pace and within a timescale which will suit our best interest as the client. Payment Profiling is not intended to delay or defer payments which might oblige a contractor to borrow funds and thereby increase tender prices.

15. In theory, it should be possible to apply Payment Profiling to most contracts but in practical terms a suitable contract should straddle one or more years in order to gain the desired benefit from capping expenditure. Fast track contracts of short duration and which will be completed within a single financial year would not be suitable candidates. However, all other projects above a reasonable threshold (£3m) and six months' duration depending on the likely start date, can be considered potential candidates. The best candidates, however, would be capital projects. A "Z" clause is not yet available.

Extended defects period and retention bond

16. There are potential merits in extending the standard maintenance period from 12 months to 3 or even 5 years in respect of capital works contracts of £3m and above. By extending the standard period, the client should be better protected against defective workmanship because an extended period would encourage a contractor to be more proactive in avoiding poor quality construction. Better quality workmanship would lead in turn to improved cost efficiencies in respect of long term maintenance requirements.

17. There are inherent problems arising from extended defects periods. For example, although a contractor is fully liable in contract for acts and omissions he will always seek to limit his liability by shifting blame to the Project Manager who had supervised and certified work as being completed. The effects of wear and tear will also distort the point of liability and dilute subsequent damages. Defects periods beyond 5 years are not therefore thought viable. An optimum period is considered to be 3 years especially if the works contract is combined with landscaping.

18. If an extended defects period is adopted, it would be sensible to offer a retention bond facility to help relieve the contractor's cash flow position. A bond is normally less expensive to service than a bank loan and the contractor is likely to reflect these cost savings in his tendered price.

Quality management system

19. Project Managers have discretion to require tenderers to operate a quality management system complying with BS EN 150 9000 for the performance of the contract. A quality plan will then need to be produced which will set out all the procedures, processes, resources and lines of responsibilities required for design (where applicable), supervision, testing, construction, completion and commissioning requirements of the project. By contrast, the programme is an "action plan" setting out a series of construction phases, methods and dates in which the works will be performed. Both the quality plan and programme are therefore complementary documents.

20. A quality plan provides a useful audit trail to monitor the quality and standard of workmanship. Such a plan will help to ensure that workmanship is carried out to the desired quality and that errors and faults are minimised. This will enhance the overall quality of the built works and provide longer term cost savings in reduced maintenance. It is therefore a useful mechanism for improving quality of workmanship for minimal cost.

21. This initiative is normally suitable for capital projects of £5m and over.

Quality submission

22. When a quality/price tender assessment system is employed it is necessary to seek a "Quality Submission" from each tenderer in support of their tender. This submission will be making various assertions and representations concerning quality aspects of their proposals such as approach, innovation, techniques and methods of construction and it is important to make these quality aspects enforceable in the contract.

23. This is achieved by including a clause in the contract stating that information contained in the Quality Submission will be referred to in, and become an actionable term of, the contract. Include this clause whenever quality/price tender assessment is being used.

Transfer of risks (ground and SUs)

24. Project Managers should adopt a realistic and businesslike approach when considering transferring such risks to the contractor. It is advisable to identify all potential risks during the tender preparation stage, grade them by importance and likely impact (high, medium and low) and where possible cost them. This could be done in a brainstorming exercise with the consulting engineer. The Project Manager should be satisfied that value for money will result as a result of these risks being transferred to the contractor.
25. Produce a list of risks (a risk register) and consider attaching a copy of it as an annex to the instructions for tendering under notes for guidance. Put an appropriate disclaimer of responsibility on the list.

Year 2000 date compliance warranty

26. Attention is drawn to the issues surrounding the 'Year 2000' problems and the action that must be taken in respect of new works contracts and commissions.
27. The cause of the Year 2000 problem is deceptively simple. It arises from the way in which computers and other electronic systems use "dates". The time-keeping system within electronic equipment works by adding a 1 to a register recording seconds; when this is full (ie when it gets to 60) it overflows adding a 1 to the minutes register whilst resetting the seconds to zero. This process continues in a similar way for "hours", "days" and "years". Data is stored in ss/mm/hh and dd/mm/yy format. By storing the year as 2 digits rather than 4, no account is taken of what will happen at the end of the century when 1 is added to the year register of 99, with no capacity to overflow.
28. What seems to happen in most cases is that the system reverts either to the year 1900 or to a default date of 4 January 1980 and continues from there, causing problems in validating, displaying, calculating, storing and presenting information. This means that systems may fail or behave unpredictably to the detriment of our business. The problem extends beyond business and administrative applications to automated systems embedded in plant machinery and process control systems that are sensitive to the date of the week.
29. The only solution is to detect and eliminate problems, where possible, now and to prevent them in new plant, machinery and process control systems.

Goods vehicles on construction sites

30. In conjunction with the Vehicle Inspectorate Agency (VI), HA is keen to prevent goods vehicles from operating illegally on HA works. In view of this the following new measures have been agreed:
- (i) the HA, or its representative, will notify VI of the start of works at each construction site so that VI will have advance warning of significant movements of goods vehicles to enable VI to organise vehicle checks;
 - (ii) a "warning" will be included in HA works contract tendering instructions that HA will notify VI of the commencement of works so that VI may undertake checks on the goods vehicle operator licences;
 - (iii) the introduction of a clause in all works contracts which requires contractors and their sub-contractors operating goods vehicles in connection with the contract to carry the Operator's licence disc (O-liscence disc) in the vehicles or, for vehicles without a disc, documentation giving the operator's licence number, name and address.

SECTION III

Explanatory note on other requirements

Considerate Constructor's Scheme

31. The Highways Agency has adopted the Construction Industry Board's Considerate Constructor's Scheme (CCS). Project Managers must ensure that all contractors register HA sites involving work of four months or more. Registration under the Scheme will ensure that Highway's Agency sites comply with the Scheme's code of practice. [The Scheme's Code of Practice, Terms of Reference, Site Manager's and Site Observer's Code is produced and circulated by the Construction Industry Board.]

Tender Assessment Sheet (Financial)

32. The Tender Assessment Sheet (Financial), attached to the Instructions for Tendering as Annex A, must be completed and issued with each tender invitation. This form may be amended to suit individual projects. Any amendments made should also be reflected in Contract Data Part Two. A worked-up example of this form is at Appendix A. The full text of this document is on page 116 of ECC Guidance Notes (brown book).

Outline Programme

33. An outline programme received as part of the Quality Submission should be checked carefully to ensure that the tenderer's understanding and approach to the scheme and the methods and resources proposed to complete the works are acceptable and fully meet the objectives and requirements of the scheme. Where it does not, or if there are significant doubts, a zero mark must be awarded to the relevant quality aspect in the Tender Assessment Sheet (Quality) - see Annex G in Chapter 4.

APPENDIX A - TENDER ASSESSMENT SHEET (FINANCIAL)

This sheet is for the Employer's use only to assess tenders and will not form part of the contract. The hours stated against compensation events may or may not be expended.

The rates, overhead percentages and adjustment percentages are those submitted by the tenderer in Contract Data Part Two.

1. Manufacture and Fabrication

For potential compensation events allow [1500] man hours.

Senior Engineer	10% x 1500 x (hourly rate + overheads)	=	£.....
Engineer	15% x 1500 x (hourly rate + overheads)	=	£.....
Technician	20% x 1500 x (hourly rate + overheads)	=	£.....
Skilled Labour	25% x 1500 x (hourly rate + overheads)	=	£.....
Semi Skilled Labour	30% x 1500 x (hourly rate + overheads)	=	£.....
Total			£.....

2. Design

For potential compensation events allow [1000] man hours.

Design Manager	10% x 1000 x (hourly rate + overheads)	=	£.....
Senior Design Engineer	15% x 1000 x (hourly rate + overheads)	=	£.....
Design Engineer	20% x 1000 x (hourly rate + overheads)	=	£.....
Senior Technician	25% x 1000 x (hourly rate + overheads)	=	£.....
Technician	30% x 1000 x (hourly rate + overheads)	=	£.....
Total			£.....

3. Site Employees

For potential compensation events allow [3000] man hours.

Senior Engineer	10% x 3000 x (hourly rate + overheads)	=	£.....
Site Engineer	15% x 3000 x (hourly rate + overheads)	=	£.....
Foreman	20% x 3000 x (hourly rate + overheads)	=	£.....
Skilled Labour	25% x 3000 x (hourly rate + overheads)	=	£.....
Unskilled Labour	30% x 3000 x (hourly rate + overheads)	=	£.....
Total			£.....

4. Site Equipment

For potential compensation events allow [3000] equipment hours.

(Rates are from the Civil Engineering Contractors Association's "Schedule of Dayworks".)

Light Van	15% x 3000 x ("adjustment" percentage)	=	£.....
Passenger Transporter	15% x 3000 x ("adjustment" percentage)	=	£.....
5 Tonne Truck	45% x 3000 x ("adjustment" percentage)	=	£.....
Compressor	20% x 3000 x ("adjustment" percentage)	=	£.....
Lorry Mounted Crane	5% x 3000 x ("adjustment" percentage)	=	£.....
Total			£.....

Total for potential compensation events (1, 2, 3 and 4) = £.....

Plus fee percentage on compensation events = £.....

Tendered total from Form of Tender = £.....

TOTAL FOR TENDER ASSESSMENT PURPOSES ONLY = £.....

2. INVITATION TO TENDER LETTER

Dear Sirs

**INVITATION TO TENDER NO:
FOR AN ECC (OPTION †) PRICED CONTRACT
SCHEME:**

Following your recent expression of interest in wishing to be considered for this scheme, you are now formally invited by the Highways Agency on behalf of the Secretary of State for the Environment, Transport and the Regions to submit a tender in accordance with the tender documents which [*are being despatched to you by our consulting engineers for the Works] [*are available for collection at].

Your tender offer must be submitted in accordance with the Instructions for Tendering, without any qualifications, and must be delivered to the above address by [12 noon] on day An addressed label for your use is enclosed.

The Secretary of State does not bind himself to accept the lowest or any tender and reserves the right to abandon this tender requirement.

I should be grateful if you would acknowledge receipt of this letter and confirm your intention of submitting a tender.

Yours faithfully

[†] insert main option letter

[*] delete or modify as appropriate

3. FORM OF TENDER

ENGINEERING AND CONSTRUCTION CONTRACT
(SECOND EDITION 1995)

FORM OF TENDER

WITHDRAWN

(ECC COLLUSIVE)

**TENDER
FOR THE CONSTRUCTION, COMPLETION,
TESTING AND COMMISSIONING OF
.... [SCHEME' S TITLE]:**

To: The Secretary of State for the Environment, Transport
and the Regions
Highways Agency
[enter address]

Having examined the Conditions of Contract, being Option [*...] of the Engineering and Construction Contract (Second Edition 1995), together with Contract Data Parts One and Two, the Works Information and the Site Information for the construction of the above mentioned Scheme we offer to Provide the Works and maintain the same until the *defects date* in conformity with the said Conditions of Contract, the Contract Data Parts One and Two, the Works Information and the Site Information for a Price of £..... .

We undertake to start and complete the works on the dates stated in Contract Data Part One of the Conditions of Contract.

Contract Data Part Two

[*Activity Schedule] [*Bill of Quantities]

*An outline Quality Plan conforming to Clause Z8 of Conditions of Contract;
Statements in support of the Quality Submission

* *where applicable*

If our tender is accepted we will, when required, provide a full Parent company guarantee in the form prescribed by Appendix A to the Contract Data Part One unless such a guarantee has previously been lodged with the Employer.

[*We agree to enter, when required, into a formal Deed under seal for carrying out these Works in the form which has been provided to us by you with the tender documentation. Unless and until such a Deed is prepared and executed] this tender, together with your written acceptance thereof, shall constitute a binding contract between us. We understand that you are not bound to accept the lowest, or any tender you may receive.

[Note: If a Deed is not requested delete words in [] above.]*

We certify that this tender is made in good faith and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not, and we undertake that we will not:

- (i) Before the award of any contract for the work:
 - (a) communicate to any person other than the Secretary of State or a person duly authorised by him in that behalf the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
 - (b) enter into any agreement or arrangement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- (ii) Pay, give or offer or agree to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the work, any act or thing of the sort described at (i) (a) or (b)

We also certify that the principles described in paragraph (i) and (ii) above have been, or will be, brought to the attention of all subcontractors, suppliers and associated companies providing services or materials connected with the tender and any contract entered into with such subcontractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.

In this certificate, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions. The word “person” includes any persons and any body or association, corporate or unincorporate; “any agreement or arrangement” includes any transaction, formal or informal and whether legally binding or not; and “the work” means the work in relation to which this tender is made.

Dated this.....day of 199

Signature.....In capacity of
(eg Director, Secretary etc)

Name
(in capitals)

Duly authorised to sign tenders for and on behalf of:

Registered Address	Telex No
.....	Tel No
.....	Fax No

4. INSTRUCTIONS FOR TENDERING

[SCHEME TITLE]

INSTRUCTIONS FOR TENDERING
AND GUIDANCE NOTES
FOR AN ECC OPTION ...
PRICED CONTRACT WITH
[*ACTIVITY SCHEDULE]
[*BILL OF QUANTITIES]

Contents

Part I: Instructions for Tendering

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Part II: Guidance Notes to Tenderers

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	List of documents to be returned with Tender

* [] delete as appropriate

ANNEXES

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[optional item]	Annex P:	Lane Rental Assessment (Example)

[Note: if an item is not required delete and re-number accordingly]

PREAMBLE

TENDERS MUST BE SUBMITTED IN ACCORDANCE WITH THE FOLLOWING INSTRUCTIONS. TENDERS NOT COMPLYING WITH THESE INSTRUCTIONS IN ANY PARTICULAR WAY MAY BE REJECTED BY THE EMPLOYER WHOSE DECISION IN THE MATTER SHALL BE FINAL.

1. These Instructions for Tendering relate to a contract for the [partial design,] construction, completion, testing, commissioning and maintenance of the following works: *[enter scheme description and co-ordinates]*. The Employer will be the Secretary of State for the Environment, Transport and Regions but all administrative functions will be performed by the Highways Agency at *[address and telephone number]* and whose project manager for the contract is *[enter name]*.
2. The works will be carried out under terms and conditions of the Engineering and Construction Contract (ECC), Second Edition, published in November 1995 by the Institution of Civil Engineers, using Option [A, B, etc] priced contract with [*activity schedule] [*bill of quantities]. Tenderers must familiarise themselves with these conditions and any modifications or additions made by the Highways Agency. Any resultant contract will be executed by Deed under seal. * [] delete as appropriate
3. A list of documents provided with this invitation and a list of documents to be returned with the Tender, is provided in the Guidance Notes at the end of these Instructions.

ECC FEATURES

4. Tenderers must be aware of the following:-

[optional subparagraph - see guidance notes]

- a. **Programme:** tenderers are required to submit an outline programme as part of their Quality submission (see paragraph 36 below). The programme must include a broad outline as set out in clause 31.2 of ECC. It is required to enable to Employer to judge a tenderer's understanding and approach to the project and their ability to complete the works within the stated time using the methods and resources proposed. Any resultant award of contract will not imply acceptance of the programme;
- b. **Schedule of Cost Components:** this schedule will be used to value any compensation events arising during the contract. Tenderers must provide certain facts for this Schedule as required in Contract Data Part Two. That information will be used in evaluating the tender - see Annex A: Tender Assessment Sheet (Financial);
- c. **Contract award date:** a period of about [2] weeks will be allowed between award of contract and the starting date specified in Contract Data Part One as a mobilisation period;
- d. **Completion date:** this date has been specified in Contract Data Part One. Tenderers must enter their own completion date for the whole of the works (and any sections thereof) in Contract Data Part Two. This may be the same date provided or an earlier date (if an earlier date that date will then become the Completion date) but no premium will be applied in tender evaluation for earlier completion dates. *[Delete last wording from "but" to "dates" if bonus/rental contract.]* [*Tenderers must also calculate and enter appropriate quantities for any time related items in the preliminaries section of the bill of quantities];
*[*if option B used]*
- e. **Discrepancies:** if any discrepancy arises between the priced [*activity schedule] [*bill of quantities] and the tendered price, the tendered price will take priority;
* [] delete as appropriate

- f. **Management functions:** the Highways Agency has retained [*] who will take on full responsibility for performing the management functions and duties of *Project Manager* and *Supervisor* as defined by ECC. The designated official for each job is as follows:-
[*Consultant engineers for the scheme]

Project Manager:[enter name].

Supervisor:[enter name].
- g. **Queries:** any queries arising from the tender documents which may have a bearing on the offer should be raised with the *Employer* as soon as possible (preferably in writing) but in any case not later than [14] days prior to the date of return of tenders. The *Employer* will be ready to consider properly reasoned requests for an extension of the tender period;
- h. **Adjudication:** the Model Adjudication Procedure, published by the Construction Industry Council, second edition dated November 1998 will be used for this contract. A list of proposed names of adjudicators is at Annex B. Tenderers should indicate with their tender whether any of the proposed adjudicators are acceptable and whether the proposed terms of appointment (at Annex C) are also acceptable. If proposed adjudicators are not acceptable tenderers should propose three names (including addresses and telephone numbers) with their tenders.
- i. **Adjudicator:** in the event of a dispute, an appointment will be made jointly by the *Employer* and the *Contractor* from Annex B. If tenderers disagree with any of these proposals they must include their alternative proposals with their tender. Please note that the *Employer* and the *Contractor* shall each bear 50% of the costs of the Adjudicator.
- j. **Site Information:** tenderers are provided with the following documents: [include as necessary]
- (a) Deflectograph survey of existing carriageways,
 - (b) Existing Structures Drawings,
 - (c) Topographical Survey,
 - (d) Geotechnical Survey Information,
 - (e) Any other relevant survey information
- k. **Disclaimer:** no guarantee as to the accuracy or completeness of this data is given nor as to the extent if at all to which such data are representative of the nature of the site, the ground and the subsoil. Tenderers' attention is drawn to clause 60.2 of ECC. Tenderers may make their own arrangement to carry out additional surveys. Prior notice must be sought from the *Employer* for such surveys; and
- l. **Additional clauses:** tenderers' attention is drawn to the following additional "Z" clauses which have been added to ECC and are set out in Contract Data Part One: [include as necessary]
- Z1 Additional conditions of contract
 - Z2 Corrupt practices
 - Z3 Definition of Statutory Undertaker
 - Z4 Privacy of Information
 - Z5 Year 2000 compliancy
 - Z6 Goods vehicles operator's licence
 - Z7 Quality submission
 - Z8 Quality management system
 - Z9 Responsibility for Statutory Undertakers
 - Z10 Named key personnel

- Z11 Named subcontractors
- Z12 Amendment to clause 51.1
- Z13 Amendment to clause 51.2
- Z14 Recovery of sums due
- Z15 Retention bond
- Z16 New clause 51.6 (dates of payment)
- Z17 Bonus for early Completion
- Z18 Lane rental charge for late Completion
- Z19 Lane rental charge for maintenance work
- Z20 Bonus for timely daily clearance of carriageway
- Z21 Lane rental charge for late daily clearance of carriageway
- Z22 Physical conditions or artificial obstructions
- Z23 New clause 60 (suspension)
- Z24 Notice of physical conditions or artificial obstructions
- Z25 Delete clauses 60.1 (12), (13), (15) and 60.3
- Z26 Delete clauses 90.1 and 90.2 and add new 90.3 and 90.4
- Z27 Delete clauses 93.1 and 93.2 and add new 93.3 to 93.7
- Z28 Delete clauses 91 and 92
- Z29 Parent company guarantee
- Z30 Special requirements of Statutory Undertakers

- m. **[*Lump sums] [*Unit rates]:** these must be quoted in pounds and pence, as appropriate, to two decimal places. The terms 'nil' and 'included' are not to be used but should be indicated as '£0'. Figures must be inserted against each item or activity - credit values in favour of the *Employer* must not be used. If necessary, the *Employer* may contact a tenderer whose tender has required arithmetical adjustment;
* [] delete as appropriate

[Optional (n) sub-paragraph]

- n. **Risks:** the *Contractor* will take on risks associated with adverse physical conditions, Statutory Undertakers' works and adverse weather conditions (clauses 60 (12) and (13) respectively of ECC) as described in Contract Data Part One without recourse to claims for additional costs. These clauses will be excluded from any resultant contract and replaced with substituted clauses;

[if options A or C used include sub-paragraphs (o) and (p)]

- o. **Activity schedule:** tenderers are to submit an *activity schedule* with their tenders showing proposed payment profile. This will be a document referenced in accordance with Contract Data Part Two and will comprise a list of activities with an amount entered against each activity. Each amount is the sum due to the *Contractor* on completion of each activity unless it is included in a group. If groups of activities are required to be identified on the schedule, payment for each group becomes due when all the activities in that group are completed. Activity descriptions must be clear and complete so that the work included in each can be identified. An illustrative *activity schedule* is at Annex O.
- p. **Mandatory activities:** the following activities must be included in the schedule but may be subdivided: [list of particular activities to be identified or insert none]. The following groups of activities must be included in the schedule: [list of groups of activities to be identified or insert "none"].

GENERAL REQUIREMENTS

5. **Confidentiality:** the tender must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the tender documents, other than on an "In Confidence" basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the tender. Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the Press or on radio, television, screen or any other medium.

6. **Certification:** tenderers should note approval procedures (including minimum approval periods and mandatory QA requirements) for proprietary products given in the Specification and summarised in Departmental Standard SD4/92. An approved list of products is given in Departmental Advice Note SA1/98. Tenderers must satisfy themselves prior to submission of their tender that the following certificates are available as appropriate in relation to the work, goods and materials offered:

- (i) certificates of conformity with quality management schemes;
- (ii) certificates of conformity with product certification schemes (where the product is not marked);
- (iii) British Board of Agrément Roads and Bridges Certificates;
- (iv) Statutory type approval certificates;
- (v) Departmental type approval certificates;
- (vi) Departmental registration certificates;
- (vii) Departmental technical approval certificates (design and check certificates) for lighting columns;
- (viii) manufacturers' and suppliers' test certificates.

7. **Special Requirements:** tenderers should note the special requirements of statutory/privatised bodies as set out in Appendix F to Contract Data Part One. It may be necessary when arranging insurance cover required by clause 84 of ECC to let insurers know of these special requirements.

8. **Pollution:** tenderers should note any special arrangements in the Specification for disposal of hazardous material. Tenderers should also note the need to comply at their own expense with the duty of care applicable to the carrying, importing, treating, keeping and disposing of waste (including toxic or hazardous waste) as required by the Environmental Protection Act 1990 and any other relevant environmental legislation. If a waste management license or authorisation is required from the Environment Agency responsibility for obtaining it falls to the Contractor;

9. **Form of Tender:** tenders must be made on the accompanying Form of Tender which must be signed by, or on behalf of, the tenderer and returned together with all the information requested in Part II of this document. The completed documentation must be submitted to the address and by the date and time stated below. No unauthorised alteration or addition should be made to any component of the tender documents.

10. **Qualified tenders:** tenders must not be qualified or accompanied by statements or a covering letter that might be construed as rendering the tender equivocal and/or placing it on a different footing from other tenders. Only tenders submitted without qualification and strictly in accordance with the tender document as issued (or subsequently amended by the Employer) will be accepted for consideration. The Employer's decision on whether or not a tender is acceptable will be final and the tenderer will not be consulted. Qualified tenders will be excluded from further consideration and the tenderer notified.

11. **Publication:** tenderers must note that the amount of the successful tender and the name of the tenderer will be published [in the Official Journal of the European Union].

12. **Payment:** tenderers must note that the principles governing public procurement require that as far as is reasonably possible payments for goods, works or services are made after delivery. Any indication of advance pricing within a tender will be examined to decide whether a tender in such form is acceptable. If the Employer considers that advance pricing has occurred it reserves the right to require the tenderer to spread such pricing over the duration of the works.

13. **Tender acceptance:** the Employer does not bind himself to accept the lowest or any tender.

14. **Language and law:** tenderers should note that tenders and supporting documents must be written in English and that any resulting contract, its formation, interpretation and performance will be subject to and in accordance with the law of England.

15. **Insurance:** details of insurance policies held or proposed meeting requirements stated in the Insurance Table within clause 84 of ECC must be submitted with tenders for the *Employer's* approval. If an insurance policy contains any excess amount the following levels will be permitted:

- (a) for insurance risks relating to loss of or damage to the *works*, Plant and Materials, as follows:
 - i. where the tendered price is below £1m an excess limit of £5,000
 - ii. where the tendered price is above £1m an excess limit of £10,000.
- (b) for all other insurance risks included in the Insurance Table, ie relating to loss of or damage to Equipment and property, bodily injury or death to the *Contractor's* employees and bodily injury or death to third parties, as follows:
 - i. an excess limit of £2,500
 - ii. an excess limit over £2,500 will not be approved.

16. **Claims within excess:** tenderers must include with their tenders a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.

17. **Insurance queries:** should be raised in writing with the *Employer* at the earliest opportunity but in any event [14] days before return of the tender. Tenderers should note that failure to submit required insurance details will delay consideration of their tender by the *Employer*. A contract will not be awarded to a tenderer until their existing or proposed insurances have been verified.

18. **Access to private land:** arrangements for inspection of the Site which involve access to land not owned by the *Employer* must be made through the *Project Manager* to enable him to make initial contact with land owners. Responsibility for obtaining permission to enter such land and liability for any damage or disturbance caused whilst on such land rests with the tenderer. Such permission cannot be guaranteed in advance. Whilst on private land care must be taken by tenderers to minimise disturbance to occupiers.

19. **Public information:** tenderers should note requirements in the Works Information for the erection of information boards to advise the travelling public on the progress of the *works*.

20. **CDM:** the attention of tenderers is drawn to the Construction (Design and Management) Regulations 1994. It is proposed to formally appoint the successful tenderer as Principal Contractor under the Regulations at the time of contract award. Tenderers must therefore be able to satisfy the *Employer* that they are competent and have made available adequate resources for health and safety. Accordingly, tenderers are required to submit with their tenders a completed questionnaire on health and safety as set out at Annex D.

21. **Health and safety plan:** an outline plan is at Annex E. If tenderers wish to make any revisions to it the agreement of the Planning Supervisor should be sought in writing, directed through the *Employer*, prior to the return of the tender. The successful tenderer in his role as Principal Contractor will be required to develop the health and safety plan in accordance with the requirements of the CDM Regulations and co-operate with the Planning Supervisor to enable him to fulfil his duties under the Regulations.

22. **Principal Contractor:** tenderers should include a written undertaking that if awarded the contract they will be willing to accept the appointment of Principal Contractor and the duties thereof in accordance with Regulation 16 of CDM.

23. **Planning Supervisor:** the designated official is as follows:

.....
[name and address - normally the consulting engineer]

24. **Delay Damages:** liquidated damages will be payable by the *Contractor* if he fails to complete the *works* by the Completion Date. The level of such damages will be

[if bonus/rental charge is used]: set at £.... per day which represents the actual economic loss due to the delay.

[for other contracts]: based on the successful tenderer's total tendered price and calculated at a daily rate using the following formula: final award price x 15% ÷ 365 days = £... per day.

Sectional completion rates will be calculated on a pro rata basis. All relevant figures will be inserted into Contract Data Part One by the *Employer* prior to any award of contract.

25. **Bonus for** ~~*[early Completion]~~ ~~*[timely daily clearance of carriageway]~~: the *works* are required to be completed expeditiously so as to cause minimum disruption to road users. As an incentive to achieving this objective the *Employer* will pay a bonus ~~*[for early completion]~~ ~~*[for timely daily clearance of the carriageway]~~ calculated on a daily rate for each day ~~*[saved prior to the Completion Date]~~ ~~*[the carriageway is available for normal traffic during the stated hours.]~~

** [] delete as appropriate*

26. **Lane rental charge for late** ~~*[Completion]~~ ~~*[daily clearance of carriage]~~: a lane rental charge will be payable by the *Contractor* if he fails to ~~*[complete the works by the Completion Date.]~~ ~~*[re-open the carriageway for normal traffic during the stated hours.]~~

** [] delete as appropriate*

27. **Lane rental charge for maintenance work:** a lane rental charge will be payable by the *Contractor* if he re-occupies the carriageway during the defects period for the purposes of correcting Defects.

28. **Year 2000 compliancy:** a new clause Z5 has been added to ECC to ensure that performance and functionality of Plant incorporated into the *works* will not be adversely affected by dates prior to, during or after the year 2000.

29. **Goods vehicles O-licence:** a new clause Z6 requiring the *Contractor's* and sub-contractors' goods vehicles to carry at all times an O-licence disc or documents relating to the operator's licence has been added to ECC. The Highways Agency will notify the Vehicle Inspectorate Agency (VI) of the commencement of works so that VI may carry out spot-checks on goods vehicles to ensure that they are operating legally.

30. **Considerate Constructor's Scheme:** the successful tenderer will be required to register the site under the Considerate Constructor's Scheme. Tenderers must allow all costs for registering the site, including the appropriate fee and for using best endeavours to comply with the Scheme's Code of Considerate Practice. The cost of this scheme is deemed to be included in the tender and no additional costs will be met by the Employer. For details apply to Construction Industry Board's Considerate Constructor's Scheme, PO Box 75, Great Amwell, Ware SG12 9JY. Tel/fax: 01920 872837.

ALTERNATIVE DESIGNS

31. **Alternative tender:** where a tenderer wishes to submit a tender involving modifications to design or an alternative design not specifically provided for in the tender invitation, this should be submitted as an “Alternative Tender”. No alternative tender will be considered unless a tender conforming to the tender invitation is also submitted. An alternative tender must be free of qualifications and be fully priced to show clearly how and where costs would differ from the conforming tender.

32. **Submission procedure:** The following procedure and timetable must be followed when submitting an alternative tender:

tenderer should request meeting with *Project Manager* to discuss their Alternative Proposals to ensure that they meet project requirements.

By tender week

[3] weeks

tenderer's written notification of Alternative Proposals with relevant details

[4] weeks

the Highways Agency's Technical Approval Authority's initial response to tenderer's Alternative Proposals

[6] weeks

tenderer submits draft Approval in Principle (AIP) forms

[7] weeks

Stage 1 Safety Audit submitted

[9] weeks

final AIPs confirmed by Employer

[9] weeks

33. An alternative tender must be accompanied by all necessary supporting information including drawings and a priced addendum to the [*activity schedule] [*bill of quantities]. Materials, workmanship and design of alternative proposals must comply with the Design Manual for Roads and Bridges and the Specification for Highway Works, in particular standard BD2/89 which are all published by The Stationery Office. An alternative tender will be assessed on its merits. If accepted, the alternative design will become the design for the purposes of the contract and the Employer will take on full copyright responsibility. * [] delete as appropriate

34. A decision to adopt an alternative design will be based on the likely cost savings of the proposals. In assessing the overall saving account will be taken of the effect of any deferment in starting and completion dates of the project and the cost to the Employer of maintenance assessed in accordance with standard BD 36/92, or subsequent amendment thereto, of additional engineering and administrative resources involved in assessing the alternative design and in implementing it through to completion of contract.

TENDER EVALUATION AND SUBMISSION

35. **Tender submission:** tenders will be assessed on the basis of both quality and price as adjusted by Annex A.

[if bonus/rental charge is used, add]: and after allowance for time. The daily lane rental charge given in Section 5 of Contract Data Part One will be used to convert all tenders to a common time/cost basis. The shortest time offered for completion will be used as the base period for evaluation. All other tenders will have their tender price adjusted by multiplying the number of extra days for completion by the the daily lane rental charge, as shown in the example at Annex P. The contract is awarded to the tenderer with the lowest adjusted tender.

The tender must be submitted in two parts, comprising a “Quality Submission” which should be contained in Envelope A (3 copies required) and a “Financial Submission” contained in Envelope B (2 copies required). Both envelopes should then be sealed in an outer envelope clearly marked “TENDER”.

36. **Quality Submission:** Envelope A must include comprehensive information on the following:
- (i) a general description of the approach to the contract and the methodology to be employed. This should include details of previous experience of similar works, type and availability of resources to be utilised, and any innovative ideas of significance to the timely and cost effective completion of the works;
 - (ii) an outlined proposed programme;
 - (iii) the names, education qualifications and practical experience of the Contract Director (or equivalent with overall responsibility for the project) and the Contract Manager who will have responsible for day-to-day operation of the contract;
 - (iv) details of site management structure with names, disciplines, grades and CVs of all key staff including the proposed Site Agent, Site Safety Officer, Traffic Safety and Control Officer, *[include as necessary]*;
 - (v) details of Head Office support facilities including policy statements on Quality Management, Health and Safety and staff training, including the percentage of employees holding National Vocational Qualifications under the Construction Skills Certification Scheme and (if appropriate) the Fencing Industry Skills Scheme, supported by details of QA accreditation and the completed health and safety questionnaire;
 - (vi) names of any subcontractors proposed, the criteria used in their selection and their experience in the type of work to be undertaken on this contract;
 - (vii) proposed location of site compound and offices for the duration of the works;
 - (viii) proposals for customer care and liaison procedures with the *Project Manager, Supervisor, Employer,* adjacent highway authorities, emergency services, statutory/privatised bodies and transport authorities;
 - (ix) proposals for partnering, together with any comments on tender documentation.
37. **Actionable term:** it is important to note that information contained in the Quality Submission will be referred to in, and become an actionable term of, the contract.
38. **Financial submission:** Envelope B must include the following:
- (i) the completed Form of Tender, Contract Data Part Two and Tender Assessment Sheet (Financial);
 - (ii) the tendered [**activity schedule*] [**bill of quantities*]; * [*] delete as appropriate*
 - (iii) all other information required to be submitted at the tender stage.
39. **Quality Panel:** each tender submission will be assessed by two separate panels: a Quality Panel and a Financial Panel. The Quality Panel will meet first to assess quality scores and will award marks, based on the tender score criteria in Annex F, against the quality aspects in Annex G.

40. **Quality scoring:** the highest scored proposal from Annex G will be awarded 100 marks with all other proposals scored pro-rata. Any tenderer whose pro-rata score is less than 60 or who is awarded zero against [*any quality aspect] [*the following quality aspects] in Annex G will have their Financial Submission returned unopened. [* delete as appropriate]

41. **Financial Panel:** an appraisal of the [*lump sums] [*unit rates] submitted will be undertaken by the *Project Manager* who will submit recommendations to the Financial Panel. Any anomalies in individual prices will be drawn to the attention of the Financial Panel which may ask tenderers to explain the situation. * [] delete as appropriate

42. **Financial scoring:** the initial ranking on a financial basis of compliant tenders will be based on the tendered price, adjusted in accordance with Annex A. The lowest tendered total will be given 100 marks and all other totals will have one mark deducted for each percentage point by which the total exceeds that of the lowest. Percentage calculations will be to one decimal point with 0.5% rounded up. A tender priced 13.5% above the lowest will thus receive 86 marks.

43. **Final Tender Assessment:** marks for each tenderer's Quality and Financial Submissions will be aggregated on a price/quality ratio of [80:20]. Annexes H to M contain a worked example of the tender assessment calculation.

44. **Interview:** tenderers may be asked to make a presentation and answer questions during the quality assessment stage of the tender evaluation. However, it may be necessary to interview one or more tenderers following the full assessment of all tenders. All tenderers will be given the opportunity to discuss their tenders with an appropriate Highways Agency representative following the award of the contract.

45. **Delivery of tender:** tenders should be sent by registered post, recorded delivery, Red Star Service, Parcel Force Datapost, (or the nearest equivalent postal service from another member state of the European Union), or by Courier or hand delivery in a plain sealed envelope. Whichever method is used, the envelope, or any franking thereon, must not bear any marks, sign or reference which might indicate the name of the tenderer. If Parcel Force Datapost is used, tenderers will need to ensure that the Post Office waives its requirement for insertion of the sender's name. The tender must remain open and valid for 60 days. The envelope must be clearly marked as follows:

TENDER FOR:
Addressed to
.....
To arrive not later than [noon] on

46. **Surplus documents:** any drawings and other documents not returned with the tender should be sent to:
.....

PARTNERING ARRANGEMENT

47. **Partnering:** tenderers should note that the *Employer* intends to establish a co-operative or partnering arrangement for the operation of this contract. The proposed arrangement will be structured to draw on the strengths of each party's organisation in identifying and achieving mutual goals to ensure an effective and efficient operation of the contract. Within [three] weeks of award of contract, it is anticipated that an inaugural strategy meeting will be held attended by key persons from the *Project Manager*, *Contractor* and *Employer* in order to set up and plan regular partnering workshops. The inaugural meeting will agree on a joint "partnering charter" covering such issues as scope, budget, quality and safety matters, cost saving and sharing incentives as well as determining membership, agenda, frequency and location of workshops. A sample partnering charter is at Annex N.

48. **Non-contractual:** the partnering charter will not alter legal relationships between parties to the contract nor relieve a party from its obligations under the contract. All costs implementing the charter after award of contract will be born equally by the *Contractor and Employer*. To start the process, tenderers are encouraged to notify the *Employer* of any errors or areas of doubt they identify in the tender documentation. The willingness of tenderers to show an early commitment to partnering and to provide comments about tender documentation will be reflected in the evaluation of tenders.

PART II: GUIDANCE NOTES TO TENDERERS

49. **Project Manager and Supervisor roles:** neither of these two officers acts impartially but are both appointed by, and represent the direct interests of, the Employer. The Supervisor is normally resident on Site with the main duty of examining and checking workmanship to ensure that requirements of the contract are being met. The Project Manager is responsible for managing the contract and for protecting the direct interests of the Employer. He is not normally resident on Site but will make regular and frequent visits. Both the Project Manager and Supervisor are empowered to carry out actions and make decisions required under ECC.

50. **List of documents with Invitation to Tender:** the following is a list of documents included with this invitation:

1. Instructions for Tendering and Guidance Notes
2. Form of Tender
3. Form of Agreement by Deed
4. Contract Data Parts One and Two, together with Appendices
5. Works Information, including:
 - Specification
 - Drawings
 - Assessment Reports
6. Site Information, including:
 - Topographical Survey
 - Deflectograph Survey
 - Ground Investigation Factual Reports
 - Environmental Statement
7. [*Illustrative Activity Schedule] [*Bill of Quantities] * [] *delete as appropriate*

51. **Documents to be returned with tender:** the following is a summary of information required to be submitted with the tender:

- i) Completed Form of Tender
- ii) Tendered [*activity schedule] [*bill of quantities]; * [] *delete as appropriate*
- iii) Completed Contract Data Part Two

- v) The following completed Appendices:
Appendix B: Form of parent company guarantee
- vi) All the information required under the paragraph headed “Quality Submission” above in support of the tenderer’s Quality Submission
- vii) A completed Health and Safety questionnaire
- viii) Written confirmation that proposed nominations for adjudicator and terms of appointment are acceptable. If they are not, set out alternative proposals
- ix) Written undertaking stating willingness if awarded the contract to accept the appointment and duties of Principal Contractor
- x) Details of the tenderer’s insurance policies
- xi) If an Alternative Design (either partial or whole) is being submitted include the following additional information:
 - (a) Revised plans, drawings and documentation
 - (b) Schedule of changes from the original design
 - (d) Report on the Environmental Impact of the alternative design, including mitigation measures
 - (e) An [*alternative priced Activity Schedule] [*fully priced extension to Bill of Quantities]
* [] delete as appropriate
 - (f) A statement setting out the cost savings
 - (g) A statement on how the outline Health and Safety Plan would change resulting from the alternative design
 - (h) The following completed forms (obtainable from the *Project Manager*):

ANNEX A - TENDER ASSESSMENT SHEET (FINANCIAL)

Approval in Principle forms for each alternative structure
Addendum Approval in Principle Forms
Stage 1 Safety Audit Certificate

This sheet is only for the purpose of assisting the Employer to assess tenders and will not be part of the contract. The amounts stated may not be expended and may be exceeded. Other factors may be taken into account in assessing tenders. These may include cashflow effects, advance payments, design by the Contractor.

Item	Amount £	
1. Completion date		
(ie x weeks after starting date)		
(x-y) weeks at £ per week	
Data for Schedule of Cost Components		
2. Equipment Depreciation and Maintenance		
% of £
3. Working Areas Overheads		
..... % of £
4. Manufacture and Fabrication		
Total number of hours to be divided equally between each of the tendered categories:		
..... hours at £ .. per hour:.....		
.....hours at £ .. per hour:		
..... hours at £ .. per hour:		
..... hours at £ .. per hour:		
Sub Total
Manufacture and fabrication overheads		
.....% of £(above Sub Total).....	

5. Design

Total number of hours .. to be
divided according to the number
of tendered categories

..... hours at £ .. per hour:.....

.....hours at £ .. per hour:

..... hours at £ .. per hour:

..... hours at £ .. per hour:

Sub Total_____

.....

Design overheads

..... % of £(above Sub Total)

.....

[Note: The total number of hours will be divided in the following proportions according to the number of categories of employees engaged on design work entered in Contract Data Part Two. The proportions are stated beginning with the most senior categories.]

2 categories 30% 70%

3 categories 20% 35% 45%

4 categories 15% 20% 30% 35%

5 categories 10% 15% 20% 25% 30%]

6. People overheads

.....% of £

.....

7. Adjustment for Equipment in published list

.....% of £

.....

Fee percentage

8. Fee% of £

.....

9. Tendered total of the Prices

.....

TOTAL FOR TENDER

ASSESSMENT PURPOSES ONLY

£.....

ANNEX B - PROPOSED NAMES OF ADJUDICATORS

WITHDRAWN

ANNEX C - APPOINTMENT OF ADJUDICATOR

See Chapter 7 for text of agreement.

WITHDRAWN

ANNEX D - QUESTIONNAIRE ON HEALTH AND SAFETY FOR THE PURPOSES OF CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 1994

APPOINTMENT OF PRINCIPAL CONTRACTOR

A written statement is required on the following:

What is your technical and managerial approach for dealing with the risks specified in the health and safety plan issued with the tender documents?

Responses are required to the following questions in respect to your company's organisation and management and proposals for this contract:

- (a) Provide information about your accident record in the format shown in Appendix A attached.
- (b) Provide evidence of the company's commitment to and policy on health and safety.
- (c) What arrangements are there for keeping that policy under regular review?
- (d) Which senior director is named as being responsible and has the company's policy statement been signed by him?
- (e) What are the management arrangements for delegating responsibility to named individuals?
- (f) What is the proposed management structure for this particular contract? Provide details of the qualifications, experience and health and safety training of the individuals nominated for this contract.
- (g) Provide evidence that you have clear and detailed working methods for achieving the company's policy objectives.
- (h) What is the system and responsibility for reporting health and safety matters within your company?
- (i) What cooperation and involvement is expected of employees, subcontractors and the self employed?
- (j) What procedures are there for safety inspections and audits?
- (k) What is the employee training programme?
- (l) What trade union or employee safety structure is in operation?
- (m) What is the system for control of subcontractors?

Confirm that appropriate provision has been made in your tender for the following and provide evidence of your company's procedures for same:

- (a) induction training for new starters, tool-box talks and other training for special risk situations, etc.
- (b) maintenance of safe systems of work, including whether there are written risk assessments and method statements.

- (c) work equipment.
- (d) personal protective equipment.
- (e) adequate and appropriate plant, including arrangements for inspection and testing.
- (f) control of substances hazardous to health, including correct identification, assessment, storage and handling in accordance with COSHH Regulations.
- (g) protection of the workforce and the public against vibration and noise.
- (h) visual display terminals - taking into consideration their siting, design, use of ergonomic layout.
- (i) manual handling, including assessing ergonomics of workplace layouts and work activities.
- (j) first-aid, including provision of trained first aiders and the keeping of documented medical records.
- (k) reporting accidents and incidents in conformance with the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1989 (RIDDOR) and the keeping of proper records related thereto.
- (l) suitable and sufficient accident investigation procedures.
- (m) arrangements for visitors to the site.

APPENDIX A - COMPANY ACCIDENT RECORD

Information Required	1994	1995	1996	1997	1998
Average workforce (including direct employees and subcontractors/self employed)					
Total hours worked in period					
Number of Fatal Injury Incidents					
Number of Major Injury Incidents (RIDDOR)					
Number of 3-day Injury Incidents (RIDDOR)					
Incident Rate (see below)					
Frequency Rate (see below)					
Number of Dangerous Occurrence Incidents (RIDDOR)					
Number of Prosecutions by HSE or Environment Agency					
Number of Prohibition Notices by HSE or Environment Agency					
Number of Improvement Notices by HSE or Environment Agency					
Any restrictive clauses in relation to Company's Employer's Liability or Public Liability Insurance					

Calculation of Incident Rate and Frequency Rate (Method taken from H.S (G)65 "Successful Health and Safety Management")

$$\text{Incident Rate} = \frac{\text{Number of Reportable injuries in financial year}}{\text{Average number employed during year}} \times 100,000$$

$$\text{Frequency Rate} = \frac{\text{Number of Reportable injuries in period}}{\text{Total hours worked during the period}} \times 100,000$$

ANNEX E - HEALTH AND SAFETY PLAN

[This is a project-specific document.]

WITHDRAWN

ANNEX F - TENDER SCORE CRITERIA

CRITERIA		MARKS
A	Very high standard with no reservations at all about acceptability.	10
B	High standard but falls just short of A.	9-8
C	Good standard and requirements met, but with some reservations.	7-5
D	Acceptable with significant reservations but not sufficient to warrant rejection.	4-1
E	Fails to meet requirements.	0

ANNEX G - TENDER ASSESSMENT SHEET (QUALITY)

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
Contract approach and methodology	10%		
Commitment to Partnering	10%		
Proposals for design (where appropriate), planning, managing and executing the works	15%		
Proposals for senior management involvement in the Contract	10%		
Management Structure	15%		
Key persons Experience Qualifications			
Head Office support facilities	10%		
QA policy and accreditation H&S policy and records Staff training (incl. NVQs under CSCS and FISS).			
Procedures and criteria for the selection and management of subcontractors	15%		
Compound and office location	5%		
Customer care	10%		
Liaison arrangements for the Employer and others Proposals for customer care and public relations			
	100%		

TOTAL SCORE:..... Assessor:

Date:..... (signature)

ANNEX H - TENDER ASSESSMENT SHEET (QUALITY)

[WORKED EXAMPLE A]

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
Contract approach and methodology	10%	9	90
Commitment to Partnering	10%	0	0
Proposals for design (where appropriate), planning, managing and executing the works	15%	9	135
Proposals for senior management involvement in the Contract	10%	7	70
Management Structure	15%	9	135
Key persons Experience Qualifications			
Head Office support facilities	10%	9	90
QA policy and accreditation H&S policy and records Staff training (incl. NVQs under CSCS and FISS).			
Procedures and criteria for the selection and management of subcontractors	15%	4	60
Compound and office location	5%	9	45
Customer care	10%	4	40
Liaison arrangements for the Employer and others Proposals for customer care and public relations			
	100%		665

TOTAL SCORE: 665 Assessor:

Date:..... (signature)

Tender A Quality mark $\frac{665 \times 100}{860} = 77$

Tenderer A disqualified as zero scored against “Commitment to Partnering”

ANNEX I - TENDER ASSESSMENT SHEET (QUALITY)

[WORKED EXAMPLE B]

Scheme:

TENDERER:			
ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
Contract approach and methodology	10%	4	40
Commitment to Partnering	10%	7	70
Proposals for design (where appropriate), planning, managing and executing the works	15%	4	60
Proposals for senior management involvement in the Contract	10%	7	70
Management Structure	15%	7	105
Key persons Experience Qualifications			
Head Office support facilities	10%	4	40
QA policy and accreditation H&S policy and records Staff training (incl. NVQs under CSCS and FISS).			
Procedures and criteria for the selection and management of subcontractors	15%	4	60
Compound and office location	5%	9	45
Customer care	10%	4	40
Liaison arrangements for the Employer and others Proposals for customer care and public relations			
	100%		530

TOTAL SCORE: 530 Assessor:

Date:..... (signature)

Tender B Quality mark $\frac{530 \times 100}{860} = 62$

ANNEX J - TENDER ASSESSMENT SHEET (QUALITY)

[WORKED EXAMPLE C]

Scheme:

TENDERER:			
ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
Contract approach and methodology	10%	9	90
Commitment to Partnering	10%	9	90
Proposals for design (where appropriate), planning, managing and executing the works	15%	9	135
Proposals for senior management involvement in the Contract	10%	9	90
Management Structure	15%	9	135
Key persons Experience Qualifications			
Head Office support facilities	10%	9	90
QA policy and accreditation H&S policy and records Staff training (incl. NVQs under CSCS and FISS).			
Procedures and criteria for the selection and management of subcontractors	15%	7	105
Compound and office location	5%	7	35
Customer care	10%	9	90
Liaison arrangements for the Employer and others Proposals for customer care and public relations			
	100%		860

TOTAL SCORE: 860 Assessor:

Date:..... (signature)

Tender C Quality mark $\frac{860 \times 100}{860} = 100$

ANNEX K - TENDER ASSESSMENT SHEET (QUALITY)

[WORKED EXAMPLE D]

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
Contract approach and methodology	10%	9	90
Commitment to Partnering	10%	9	90
Proposals for design (where appropriate), planning, managing and executing the works	15%	4	60
Proposals for senior management involvement in the Contract	10%	4	40
Management Structure	15%	7	105
Key persons Experience Qualifications			
Head Office support facilities	10%	7	70
QA policy and accreditation H&S policy and records Staff training (incl. NVQs under CSCS and FISS).			
Procedures and criteria for the selection and management of subcontractors	15%	9	135
Compound and office location	5%	9	45
Customer care	10%	9	90
Liaison arrangements for the Employer and others Proposals for customer care and public relations			
	100%		725

TOTAL SCORE: 725 Assessor:

Date:..... (signature)

Tender D Quality mark $\frac{725 \times 100}{860} = 84$

ANNEX L - EXAMPLE OF A TENDER ASSESSMENT (WORKED EXAMPLE)

Financial Element

Tender A - Financial Submission returned unopened

Tender B £2,000,000

Tender C £2,155,000

Tender D £2,280,000

Tender B is awarded 100 marks.

Deducting from all other assessments one mark for each percentage point, rounded up where necessary for which the total exceeds the lowest:

i.e. Tender C exceeds lowest by £155,000. Therefore % above lowest is 7.75 rounded to 8. Marks deducted is 8.

Tender B: 0.00 $100 - 0 = 100$

Tender C: 7.75 $100 - 8 = 92$

Tender D: 14.00 $100 - 14 = 86$

ANNEX M - OVERALL ASSESSMENT (WORKED EXAMPLE)

20% Quality: 80% Price

1	2	3	4	5	6	7
Tender	Quality mark	20% of (2)	Tender Sum x£k	Financial Mark	80% of (5)	Aggregate (3) + (6)
A	Disqualified					
B	62	12.4	2,000	100	80.0	92.4
C	100	20.0	2,155	92	73.6	93.6
D	84	16.8	2,280	86	68.8	85.6

Tender is awarded to C

ANNEX N - SAMPLE PARTNERING CHARTER

1. BUDGET - Prompt and fair evaluation and allocation of all costs. Cost saving and sharing incentives.
2. QUALITY - Meet or exceed specified quality standards.
3. SAFETY - Ensure a safe working environment for all people associated with the project.
4. CONFLICT RESOLUTION - Ensure effective resolution of grievances and claims within an agreed time period.
5. ENJOYABLE PROJECT - Provide an atmosphere conducive to high morale and productivity, and where all participants achieve job satisfaction.
6. FAIRNESS TO ALL - Recognise the rights of all parties to fair and equitable treatment.
7. EXTERNAL RELATIONS - Meet all obligations to the community.
8. INDUSTRY MODEL - Create a new industry model which can be a benchmark for future projects.

ANNEX O - ILLUSTRATIVE ACTIVITY SCHEDULE

Payment for works will be made in accordance with the following schedule. Tenderers are responsible for inserting activity descriptions and stage payment requirements.

STAGE	PROGRAMME	ACTIVITY	PRICE
1	End week 4	i) Establish site + topsoil strip 75% complete. ii) Culverts + headwalls 25% complete.	
2	End week 8	i) Culverts and headwalls 60% complete. ii) Earthworks for slip roads 60% complete. iii) Drainage 10% complete. iv) Environmental bund 10% complete. v) Ducts 10% complete.	
3	End week 12	i) Earthworks for slip roads 40% complete ii) Drainage 50% complete. iii) Environmental bund 50% complete. iv) Ducts 50% complete.	
4	End week 16	i) Drainage 100% complete. ii) Environmental bund 75% complete. iii) Capping material 50% complete. iv) Sub base 20% complete. v) Ducts 100% complete.	
5	End week 20	i) Environmental bund 100% complete. ii) Capping material 100% complete. iii) Sub base 75% complete. iv) Surfacing 10% complete.	
6	End week 24	i) Sub base 100% complete. ii) Surfacing 50% complete.	
7	End week 28	i) Surfacing 100% complete. ii) Finishing works 50% complete.	
8	End week 32	All works 100% complete	
LUMP SUM FIXED PRICE £			

Tenderer:
Signed:
Date:

ANNEX P - LANE RENTAL ASSESSMENT (EXAMPLE ONLY)

Motorway Repair Contract - maximum allowable contract period: 70 days
- Lane Rental Charge: £10,000 per day

Tenders received in order of price

Tender Price	Offer Period	Adjustment for Annex A*	Number of Days over Base Time	Adjustment from Base Time
A £1,410,000	70 Days	£211,500	12	£120,000
B £1,455,000	62 Days	£218,250	4	£ 40,000
C £1,460,000	60 Days	£219,000	2	£ 20,000
D £1,490,000	70 Days	£223,500	12	£120,000
E £1,525,000	66 Days	£228,750	8	£ 80,000
F £1,550,000	58 Days	£232,500	0	£ 0

* For the purposes of this exercise only, a notional 15% uplift has been assumed for Annex A. In a live situation this figure will be determined by actual rates and percentages provided by each tenderer.

Adjusted pricing for tender evaluation purposes only and order of tenders

Tender	Adjusted Price				Award Placing
C	£1,460,000	+ £219,000	+ £ 20,000	= £1,699,000	1st
B	£1,455,000	+ £218,250	+ £ 40,000	= £1,713,250	2nd
A	£1,410,000	+ £211,500	+ £120,000	= £1,741,500	3rd
F	£1,550,000	+ £232,500	+ 0	= £1,782,500	4th
D	£1,490,000	+ £223,500	+ £120,000	= £1,833,500	5th
E	£1,525,000	+ £228,750	+ £ 80,000	= £1,833,750	6th

5. CONTRACT ACCEPTANCE LETTER

Dear Sirs

[NAME OF SCHEME]

I am directed by the Secretary of State for the Environment, Transport and the Regions to inform you that your tender offer dated for carrying out the above mentioned Works is accepted for the price of £..... in respect of your conforming [*alternative] proposals for completion in accordance with the terms and conditions of the contract.

Your tender offer dated ... , together with the following completed documents, viz:

Contract Data Part One
Contract Data Part Two
[*Activity Schedule] [*Bill of Quantities]
Works Information
Site Information

* where appropriate

as amended and amplified by the following documents, viz: [A]

your letter ref..... dated.....
our letter ref..... dated.....
our circular letters nos. 1,2, etc dated.....

and this letter shall constitute a binding agreement between yourselves and the Secretary of State. For the purposes of complying with the Construction (Design and Management) Regulations 1994, I hereby formally appoint your company as the principal contractor.

*[As agreed in your tender offer I am enclosing two copies of an Agreement by Deed for carrying out these Works. Please sign and seal both copies of the Deed and return both copies to me by ... [B] We will then apply the Secretary of State's official seal and return one copy for your retention. Your own seal should be witnessed by a director and the secretary of the company or by two directors.]

The amount in respect of delay damages for this contract has been assessed as £ ... per day based on the formula given in the Instructions for Tendering. Please insert this figure in your copy of the Contract Data Part One.

Please treat the contents of this letter as strictly confidential until the Secretary of State makes a public announcement.

Yours faithfully

Key

- * delete or modify as appropriate.
- (A) include any changes during tender or subsequent negotiation
- (B) allow 7 days for return.

6. FORM OF AGREEMENT BY DEED

FORM OF
AGREEMENT BY DEED
FOR USE WITH ECC

WITHDRAWN

DATED

199

THE SECRETARY OF STATE
FOR THE ENVIRONMENT, TRANSPORT
AND THE REGIONS

-AND-

[] LIMITED

AGREEMENT BY DEED

CONTRACT NO: []

THIS DEED is made the..... day of..... 199..

BETWEEN

1. **THE SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS** of Eland House, Bressenden Place, London SW1E 5DE (hereinafter called “the *Employer*”);

AND

2. [.....] a company incorporated in and in accordance with the laws of [.....] having as its registered number [.....] and its registered office at] (hereinafter called “The *Contractor*”).

RECITALS

- (1) The *Employer* wishes to have the following works constructed, completed, tested, commissioned and maintained: [enter description of the scheme]
.....
for which the *Employer* has submitted to the *Contractor* his Works Information.
- (2) On the.....day of.....199.. the *Contractor* submitted a Tender in response to the *Employer*’s Works Information. The *Employer* has examined the *Contractor*’s said Tender and subject to the provisions of the Contract is willing to engage the *Contractor* to construct, complete, test, commission and maintain the *works*.

NOW IT IS HEREBY AGREED as follows:

1. In this Deed words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.
2. The Contract hereby made shall consist of the following documents:
 - 2.1 This Deed (“the Deed”)
 - 2.2 The Conditions, being the second edition (1995) of the NEC Engineering and Construction Contract, option [*A] [*B] [*C] as amended, together with the completed Contract Data Parts One and Two thereto (“the Conditions”),
 - 2.3 The Works Information, including all specifications, plans, drawings, graphs, sketches, models and other documents relating to the design of the *works*;
 - 2.4 The tendered [*activity schedule] [*bill of quantities]; and
[*] as appropriate
 - 2.5 The *Contractor*’s Tender offer and the *Employer*’s acceptance of the Contract.
3. The several documents forming the Contract are to be taken as mutually explanatory of one another.

4. In consideration of the Price of [£.....] as the same may be adjusted pursuant to the Conditions the *Contractor* hereby covenants with the *Employer* to construct, complete, test and commission the *works* and to maintain the same until the *defects date* in conformity in all respects with the provisions of the Contract.
5. The *Employer* hereby covenants to pay the *Contractor* in consideration of the obligations of the *Contractor* hereunder the Price or such other sum as may become payable under the Conditions at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Deed to be executed the day and year first before written.

The Corporate Seal of the **Secretary of State for the Environment, Transport and the Regions** hereunto affixed is authenticated by:

Authorised by the Secretary of State for the Environment, Transport and the Regions

The Common Seal of the **[Contractor]** was hereunto affixed in the presence of:

Authorised signatories of [Contractor]

7. APPOINTMENT OF ADJUDICATOR

ADJUDICATOR'S APPOINTMENT (2)

THIS AGREEMENT is made on the day of -

BETWEEN:

(1)

of

(the referring Party);

(2)

of

(the other Party)

(together called the Parties) and

(3)

of

(the Adjudicator).

A dispute has arisen between the Parties under a Contract between them dated in connection with

This dispute has been referred to adjudication in accordance with the CIC Model Adjudication Procedure (the Procedure) and the Adjudicator has been requested to act.

IT IS AGREED that:

- 1 The rights and obligations of the Adjudicator and the Parties shall be set out in this Agreement.
- 2 The Adjudicator confirms that he is independent of the Parties, and undertakes to use reasonable endeavours to remain so, and that he shall exercise his task in an impartial manner. He shall promptly inform the Parties of any facts or circumstances which may cause him to cease to be so independent.
- 3 The Adjudicator agrees to adjudicate the dispute in accordance with the Procedure.
- 4 The Adjudicator shall comply, and shall take all reasonable steps to ensure that any persons advising or aiding him shall comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained either by the Adjudicator or any person advising or aiding him is confidential, and shall not be used or disclosed by the Adjudicator or any such person except for the purposes of this Agreement.
- 5 The Parties agree jointly and severally to pay the Adjudicator's fees and expenses as set out in the attached schedule and in accordance with the Procedure.

- 6 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator, unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 7 This Agreement shall be interpreted in accordance with the law of England and Wales.

SCHEDULE

1. The Adjudicator shall be paid £ per hour in respect of all time spent on the adjudication.
2. The Adjudicator shall be reimbursed the cost of legal or technical advice obtained in accordance with the Procedure and other extraordinary expenses necessarily incurred.
3. The Adjudicator is/is not* currently registered for VAT. Where the Adjudicator is registered for VAT, it shall be charged additionally in accordance with the rates current at the date of the work done.

Signed on behalf of the referring Party

.....

Signed on behalf of the other Party

.....

Signed on behalf of the Adjudicator

.....

* Delete as necessary

8. CONTRACT DATA PART ONE

[Scheme Name]

CONTRACT DATA PART ONE
DATA PROVIDED BY THE EMPLOYER
In respect of the Institution of Civil Engineers’
Engineering and Construction Contract
(Second Edition 1995)

Highways Agency
[insert address]

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Appendices

Appendix A: Form of parent company guarantee

Appendix B: Certificates

Appendix C: Form of retention bond

Appendix D: Special Requirements

[If an item/appendix is not required, mark it "Not Used"]

CONTRACT DATA PART ONE

1. General

- 1.1 The conditions of contract are the core clauses and the clauses for Options **[A, B, C, D, E, F]** **[H, L, M, N, P, R,] T and Z** of the second edition (1995) of the NEC Engineering and Construction Contract as modified below.
- 1.2 The *works* are: *[scheme title]*
- 1.3 The *Employer* is the Secretary of State for the Environment, Transport and the Regions of Eland House, Stag Place, London SW1E 5DE. For all administrative matters, contact the Highways Agency at
- 1.4 The *Project Manager* is: *[name*
[firm
[address.....
- 1.5 The *Supervisor* is: *[name*
[firm
[address.....
- 1.6 The *Adjudicator* is only appointed if deemed necessary by either the *Contractor* or the *Employer*.
- 1.7 The Works Information is in
- 1.8 The Site Information is in
- 1.9 The *boundaries of the site* are:
- 1.10 The *language of this contract* is English.
- 1.11 The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.
- 1.12 The *period for reply* to a communication is [7] days.
- 1.13 The additional conditions of contract together with deletions of core clauses are given at the end of this document.
- 1.14 The Planning Supervisor is:
- ### 2. The Contractor's main responsibilities
- 2.1 The Contractor's liability for Defects due to his design that are not listed on the Defects Certificate is [unlimited].

3. Time

3.1 The starting date is: [count forward allowing for tender, evaluation and award periods, plus an extra 4 weeks for slippage]

3.2 The possession dates are:

Part of the Site	Date
.....
.....

3.3 The completion date for the whole of the works is

[If secondary option L is used add para 3.4 below]

3.4 The completion date for each section of the works is:

Section	Description	Completion date
.....
.....

3.5 The Employer is not willing to take over the works before the completion date. [delete and if bonus for early completion is used]

3.6 The first programme complying with Clause 31.2 shall be submitted within [14] days of the Contract Date.

3.7 The Contractor submits revised programmes at intervals no longer than: [4] weeks.

[If secondary options L and R are used together add following]

3.8 Delay damages for the sections of the works are:

Section	Description	Amount per day
1
2

[If secondary option R is used irrespective of whether L is also used, add following]

3.9 Delay damages for the whole of the works are: £.....per day.

4. Testing and Defects

4.1 The defects date is [36] months after Completion of the whole of the works.

4.2 The defect correction period is [4] weeks.

5. Payment

- 5.1 The *currency of this contract* is the pound sterling (£).
- 5.2 The *assessment interval* is [4] weeks.
- 5.3 The period within which payments are made is [4] weeks.
- 5.4 The *interest rate* is: unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require 1% per annum above the average base rate in force from time to time at the following banks: Barclays, Lloyds, National Westminster and Midland.
- 5.5 The retention free amount is: [nil].
- 5.6 The retention percentage is: [5%]

[If HA's lane rental/bonus clauses are used add following paras 5.7 to 5.11 as required]

- 5.7 The bonus for early Completion of the works is: £..... per whole day.
- 5.8 The bonus for timely daily clearance of the carriageway is: £..... per whole day.
- 5.9 The lane rental charge for late Completion of the works is: £..... per day or part thereof.
- 5.10 The lane rental charge for late daily clearance of the carriageway is: £..... per day or part thereof.
- 5.11 The lane rental charge for correcting Defects during the defects period is: £..... per day or part thereof.

[Note: if items 5.7 to 5.11 above are used, also include delay damages if 'hy-brid' works. In such an event, calculate the daily delay damages on the basis of actual economic loss for the element of works involved.]

[If main option B is used, add following]

- 5.12 The method of measurement is the Method of Measurement for Highway Works contained in Section 1 of Volume 4 of the Manual of Contract Documents for Highway Works published by The Stationery Office.

[If secondary option N (price fluctuation) is used, add paragraphs 5.13 to 5.15]

- 5.13 The proportions used to calculate the Price Adjustment Factor are:

0..... linked to the index for

0.....

0.....

0.....

0.....

0.....

0..... non-adjustable

1.0

5.14 The *base date* for indices is:

5.15 The indices are those prepared by the Department of the Environment, Transport and the Regions and published by The Stationery Office in the “Price Adjustment Formulae for Construction Contracts - Monthly Bulletin of Indices”:

Index of the Cost of Labour in Civil Engineering Construction;

Index of the Cost of Providing and Maintaining Constructional Plant and Equipment;

Indices of Constructional Material Prices.

[If main options C or D (target cost) is used, add paragraphs 5.16 and 5.17 below]

5.16 The Contractor’s share percentages and the share ranges are:-

<u>share range</u>	<u>Contractor’s share percentage</u>
less than%%
from.....% to%%
from.....% to%%
greater than%%

[If main options C, D, E or F is used, add following]

5.17 The Contractor prepares forecasts of Actual Cost for the works at intervals no longer than [4] weeks.

6. Compensation events

6.1 The place where weather is to be recorded is:

6.2 The *weather measurements* to be recorded for each calendar month are

the cumulative rainfall (mm)

the number of days with rainfall more than 5mm

the number of days with minimum air temperature less than 0 degrees Celsius

the number of days with snow lying at hours GMT and these measurements:

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at and which are available from

Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are:

6.3 There are additional and/or modifications to compensation events which are given in the list of additional Z clauses under section 1 above.

7. Title

7.1 No amendments or modifications are made to core clause 70.

8. Risks and insurance

- 8.1 The amount of the minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) due to activity in connection with this contract for any one event is [**£5,000,000**].
- 8.2 The amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract shall comply with statutory requirements.
- 8.3 The *Employer* does not provide any of the insurances stated in the Insurance Table.
- 8.4 There are no additional *Employer's* risks.

9. Disputes and termination

- 9.1 The person who will choose a new adjudicator if the Parties cannot agree a choice is the President for the time being of the Institution of Civil Engineers.
- 9.2 The adjudication procedure is the Model Adjudication Procedure, published by the Construction Industry Council, second edition dated November 1998 and any amendments or alterations thereto current at the date of the notice of dispute.
- 9.3 The tribunal is arbitration. The arbitration procedure is the Institution of Civil Engineers Arbitration Procedure (1997).

Additional conditions of contract (Option Z)

- Z1.** The additional conditions of contract are below.

APPENDIX A - FORM OF PARENT COMPANY GUARANTEE (FULL GUARANTEE)

WHEREAS THE SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS of Eland House, Bressenden Place, London SW1E 5DE (hereinafter referred to as the “Employer”) and [name of Contractor] of [address of Contractor] (hereinafter referred to as the “Contractor”) have entered into a contract dated [date of Contract] (hereinafter referred to as “the Contract”) for the construction, completion, testing, commissioning and maintenance by the Contractor of [the works.....] all as more fully described in the Contract, for a Price, as defined in the Contract, of [.....] pounds, [£.....].

AND WHEREAS under the terms of the Contract, the Contractor is required to procure a guarantee to be given by its ultimate parent company for the due performance of all the Contractor’s obligations or liabilities under the Contract.

NOW THEREFORE it is agreed as follows:

1. We [name of Ultimate Parent Company] of [registered office] as the ultimate parent company and guarantor (hereinafter referred to as “the Guarantor”) of [name of Contractor] guarantee unconditionally and irrevocably as a primary obligation to you and not as a surety that the Contractor shall perform all of its obligations or liabilities contained in and in accordance with the Contract.
2. If the Contractor shall fail to so perform any of its obligations under the Contract or any of its liabilities arising out of or in connection with the same, the Guarantor shall forthwith perform such obligations or liabilities on the same terms or conditions as contained in the Contract or cause a third party acceptable to the Employer to so perform such obligations or liabilities on the same terms and conditions, the due or forthwith performance of which the Guarantor shall guarantee by virtue of this Guarantee as if such third party were the Contractor.
3. The variation, amendment, extension or suspension of the Contract or the giving of time by the Employer or any negligence or forbearance by the Employer in enforcing its obligations either under the Contract or under this Guarantee or any other indulgence, concession or arrangement granted, made or entered into by the Employer shall not in any way prejudice the Guarantor’s obligations under this Guarantee to the Employer, in whole or in part, pursuant to the terms thereof.
4. The Guarantor hereby authorises the Contractor and the Employer to make any amendment or variation to the Contract, the due performance of which amendment or variation shall be likewise guaranteed in accordance with the terms of this Guarantee.
5. This Guarantee shall continue in effect until all the obligations and liabilities of the Contractor under or in connection with the Contract have been performed and complied with and notwithstanding any change in the shareholding by the Guarantor in the Contractor.
6. This Guarantee is subject to English law and the jurisdiction of the English Courts.

IN WITNESS whereof the Guarantor has caused its common seal to be hereunto affixed this day of 199

APPENDIX B - CERTIFICATES

INDEX

Part 1	Payment Certificate
Part II	Completion Certificate
Part III	Defects Certificate

WITHDRAWN

APPENDIX B: PART I - PAYMENT CERTIFICATE

Highways Agency

CON(H) 501

WORKS CONTRACTS PAYMENT CERTIFICATE

Valuation No. _____

NARIS No. _____

Period Ended _____

Contractor _____ Contract _____

Address for Payment _____ Client representative or equivalent _____

Overseeing Organisation _____

Date of receipt of Monthly Statement _____

Payment due date _____

1.	Value of Permanent Works executed and all other matters payable BUT NOT including the items mentioned at 6 below.	£
2.	*ADD/DEDUCT Contract Price Fluctuation as defined in Contract	
3.	Valuation after application of Contract Price Fluctuation.	
4.	DEDUCT Retention Money now to be held [as contract conditions]	
5.	NET Valuation (3-4)	
6.	ADD + **% of value of goods or materials	
	a. on Site	
	b. not on Site but vested in Overseeing Organisation	
	** INSERT PERCENTAGE	
7.	Valuation (5 + 6)	
8.	Deduct total amount previously certified for payment including releases of retention money if any.	
9.	AMOUNT OF THIS CERTIFICATE (7-8)	
10.	I CERTIFY that the sum of _____	

_____ is now due to the Contractor in accordance with the
terms of the contract.

Signed: _____ Date _____

Authorised to sign under the Contract

11.	VALUE ADDED TAX	£
	£ _____ at Standard Rate (.....%) =	
	Total VAT Payable	

OVERSEEING ORGANISATION'S USE ONLY (NOT PART OF WORKS CONTRACTS CERTIFICATE)

Amount of Certificate (9)	£
Value Added Tax (11)	£
Liquidated Damages (DEDUCT)	£
Lane rental Bonus payments/charges *(ADD/DEDUCT)	£
Other Adjustments *(ADD/DEDUCT)	£
TOTAL PAYMENT	£

SIGNED _____ Date: _____

OVERSEEING ORGANISATION Project Manager

* Delete as necessary

(Rev 7/98)

APPENDIX B: PART II - COMPLETION CERTIFICATE

Certificate Seq. No.....

COMPLETION CERTIFICATE

Form of Completion Certificate to be used by the *Project Manager* when the *works* have been substantially completed in accordance with Clause 30.2.

1. We certify that:-

*(a) The whole of the *works* was substantially completed in accordance with the *Contract*

on ;

*(b) The *Employer* has elected to use those parts of the *works* set out below in accordance with Clause 35.3 as from.....

*Delete as required.

Works defined in 1(b) are:-

Signed:.....
Project Manager

Name:.....

APPENDIX B: PART III - DEFECTS CERTIFICATE

Certificate Seq. No.....

DEFECTS CERTIFICATE

Form of Certificate to be used by the *Supervisor* for the satisfactory completion of the defects period as required by Clause 43.2.

1. We certify that the *Contractor* has complied with its obligations in accordance with the contract.

[identify works subject of this Certificate]

Signed:.....
Supervisor

Name:.....

Date:.....

APPENDIX C - FORM OF RETENTION BOND (2½% OF CONTRACT SUM)

WHEREAS THE SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS of Eland House, Bressenden Place, London SW1E 5DE (hereinafter referred to as the “*Employer*”) and [name of Contractor] of [address of Contractor] (hereinafter referred to as the “*Contractor*”) have entered into a contract dated [date of Contract] (hereinafter referred to as “the Contract”) for the construction, completion, testing, commissioning and maintenance by the *Contractor* of [.....] all as more fully described in the Contract, for a Price, as defined in the Contract, of [.....] pounds, [£.....].

AND WHEREAS under the terms of the Contract the *Contractor* is required to furnish a guarantee by [an international bank or other acceptable Surety] up to the value of [£.....] (2½% of Contract Sum), as a condition precedent to the release by the Employer to the Contractor of Retention Monies, as defined in the Contract, upon the issue of the Completion Certificate until the date of the issue of the Defects Certificate pursuant to the Contract, both of which dates shall be notified to the Guarantor in writing by the *Employer*.

NOW THEREFORE it is agreed as follows:

1. We, [name of Surety] of [address of Surety] (hereinafter referred to as “the Guarantor”) do hereby guarantee to the *Employer*, by way of independent engagement, the due and correct performance by the *Contractor* of its obligations and liabilities to the *Employer* under the Contract up to a maximum of [£.....] (2½% of the Price).
2. We bind ourselves to pay to the *Employer*, as our own debt, on receipt of the *Employer*’s first written demand such sum or sums of money as the *Employer* may claim as due to the *Employer* by the *Contractor*, this however up to the aforementioned amount of [£.....], (2½% of the Price) only.
3. The variation, amendment, extension or suspension of the Contract or the giving of time by the *Employer* or any negligence or forbearance by the *Employer* in enforcing its obligations either under the Contract or under this Guarantee or any other indulgence, concession or arrangement granted, made or entered into by the *Employer* shall not in any way prejudice our obligations under this Guarantee to the *Employer*, in whole or in part, pursuant to the terms thereof.
4. Notwithstanding the date of execution set out below and the expressed period of validity referred to in Clause 5 below, this Guarantee shall cover all the said obligations and liabilities of the *Contractor* as from the date when the *Contractor* first started performance of his obligations under the Contract.
5. This Guarantee shall come into effect on the date of the Completion Certificate issued pursuant to the Contract and shall continue in force until and including the date of the Defects Certificate issued pursuant to the Contract and both of which dates shall be notified in writing by the *Employer* to the Guarantor.

IN WITNESS whereof the Guarantor has caused its common seal to be hereunto affixed
this.....day of.....199

APPENDIX D: SPECIAL REQUIREMENTS

List here any appropriate Special Requirements in relation to statutory bodies, eg:-

National Grid plc
Cable & Wireless plc
British Telecommunications Plc
Motorway Communications Systems
Water and Sewerage Companies
Environment Agency
Transco Plc
Coal Authority
British Waterways Board
Cable Television Companies
British Pipeline Agency
Traffic Control Systems
Ministry of Agriculture Fisheries and Food
The Civil Aviation Authority
Railtrack

WITHDRAWN

9. CONTRACT DATA PART TWO

[Scheme Name]

CONTRACT DATA PART TWO
DATA PROVIDED BY THE CONTRACTOR
in respect of the Institution of Civil Engineers'
Engineering and Construction Contract
(Second Edition 1995)

Tenderer's name
[insert address]

PART TWO: DATA PROVIDED BY THE CONTRACTOR

1. The *Contractor* is: Name
Address

2. The *fee percentage* is-%

3. The *working areas* are the Site and

4. The key people together with CVs, are as follows:

	<u>Clause</u>
Contractor's Director	24.1
Contractor's Site Agent	24.3
Contractor's Site Safety Officer	24.4
[Contractor's Quality Manager	24.5]
[Contractor's General Foreman	24.6]
[Contractor's Traffic Safety and Control Officer	24.7]
[Contractor's Designer	24.8]
* if applicable	

5. [Optional] The Works Information for the Contractor's design is in:

.....

6. The programme identified in the Contract Data is [see para 4 (a) of the Instructions for Tendering]

7. The completion date for the whole of the works is

8. The [*activity schedule] [*bill of quantities] is* as applicable

9. The tendered total of the Prices is in the Form of Tender.

10. Data for Schedule of Cost Components

10.1 The hourly rates for Actual Cost of manufacture and fabrication outside the Working Areas are:

Category of employee	Hourly rate
.....
.....

10.2. The percentage for manufacture and fabrication overheads is%

10.3. The hourly rates for Actual Cost of design outside the Working Areas are:

Category of employee	Hourly rate
.....
.....

10.4. The percentage for design overheads is%

10.5. The categories of employees whose travelling expenses to and from the Working Areas are included in Actual Cost are:

*Not used with the Shorter
Schedule of Cost Components*

10.6. Except for special items the percentage for Equipment depreciation and maintenance is %

10.7. The percentages for depreciation and maintenance for special items of Equipment are:

<u>Equipment</u>	<u>Size or capacity</u>	<u>%</u>
.....
.....
.....
.....

10.8. The percentage for Working Areas overheads is%

*Only used with the Shorter
Schedule of Cost Components*

10.9. The percentage for people overheads is

10.10 The published list of Equipment is the last edition of the list published by

10.11 The percentage for adjustment for listed Equipment is %

10.12 The rates of other Equipment are:

<u>Equipment</u>	<u>Size or capacity</u>	<u>Rate</u>
.....
.....
.....
.....

11. Nominations for *Adjudicator* are: [name
[only required where Employer's [firm
proposed names are unacceptable] [address.....
- [name
[firm
[address.....
- [name
[firm
[address.....

12. Names of proposed subcontractors, their experience and qualifications, and areas of work envisaged are given in Appendix A.

APPENDIX A - NAMED SUBCONTRACTORS

Qualifications and experience of proposed Subcontractors:

Area of Work	Name of Sub-contractor	Experience and Qualifications

10. ADDITIONAL CONDITIONS OF CONTRACT

INDEX

Additional conditions of contract

- Z1 Additional conditions of contract
- Z2 Corrupt practices (M)
- Z3 Definition of Statutory Undertaker
- Z4 Privacy of information (M)
- Z5 Year 2000 compliance (M)
- Z6 Goods vehicles operator's licence (M)
- Z7 Quality submission
- Z8 Quality management system
- Z9 Responsibility for Statutory Undertakers
- Z10 Named key personnel
- Z11 Named subcontractors
- Z12 Payments: amendment to clause 51.1 (M)
- Z13 Payments: amendment to clause 51.2 (M)
- Z14 Recovery of sums due (M)
- Z15 Retention bond
- Z16 Dates of payment (M)
- Z17 Bonus for early Completion
- Z18 Lane rental charge for late Completion
- Z19 Lane rental charge for maintenance work
- Z20 Bonus for timely daily clearance of carriageway
- Z21 Lane rental charge for late daily clearance of carriage
- Z22 Physical conditions or artificial obstructions
- Z23 Work suspension (M)
- Z24 Notice of physical conditions or artificial obstructions
- Z25 Deletion of certain compensation events
- Z26 Adjudication: delete clauses 90.1 and 90.2 and add new Z clause (M)
- Z27 Arbitration: delete clauses 93.1 and 93.2 and add new Z clause (M)
- Z28 Adjudication: delete clauses 91 and 92 (M)
- Z29 Parent company guarantee
- Z30 Special requirements of Statutory Undertakers
- Z31 Tax and National Insurance Contributions (M)
- Z32 Effects of Weather on Work
- Z33 Value Engineering
- Z34 Definition of Temporary Works
- Z35 Temporary Works Check Certificate
- Z36 Risk transfer in bill of quantities
- Z37 Price for Work Done to Date
- Z38 Quantity of work done

Notes to tender compilers:

1. (M) means a *mandatory Z clause* to be included in all contracts. All other clauses are optional.
2. See *notes for guidance* in chapter 1. Include or delete Z clauses as considered appropriate. If deleted, put "Not Used" against Z number.
3. *Captions in italics introducing Z clauses must be removed before including the Z clause in Contract Data Part One.*
4. Z clauses 31 to 38 *have been added since publication of the April 1999 edition. Some drafting amendments have been made to existing Z clauses which are shown by a vertical line in the lefthand margin.*

Z1. The additional conditions of contract are below.

Corrupt practices

Z2. Neither the *Contractor* nor anyone employed by him or acting on his behalf

- offers or gives to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*, or
- enters into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

[If the *Contractor* is required to accept risks for *Statutory Undertakers' works*, include clauses Z3, Z9 and Z30 below.]

Definition of Statutory Undertaker

Z3. Statutory Undertaker means any person who has a statutory right or a right pursuant to a licence granted under any statute to place or maintain any apparatus (including any pipe conduit sewer drain or tunnel) on under or over the Site or to inspect adjust repair alter renew reposition or remove such apparatus.

Privacy of information

Z4. The *Contractor* does not give information concerning the *works* for publication in the press or on radio, television, screen or any other media without the written consent of the *Project Manager*.

Year 2000 Compliance

Z5. The *Contractor* warrants and represents that neither the provision, performance nor the functionality of Plant and Materials will be adversely affected by dates prior to, during and after the year 2000. In particular:

- no value for current date will cause any interruption to the provision or performance of the Plant and Materials;
- roll-over between significant time demarcations including day, week, year and century will be performed correctly;
- all date-based functionality will behave consistently and produce the desired results for all valid dates prior to, during and after the year 2000;
- all items of hardware and software will calculate, manipulate and represent dates correctly for the purposes for which they were intended;
- date elements in interfaces and data storage will permit specifying the century to eliminate date ambiguity;

- where any date element is represented without a century, the correct century will be unambiguous for all manipulations involving that element; and
- the year 2000 will be recognised as a leap year.

Goods vehicles operator's licence

- Z6.** Each goods vehicle used by the *Contractor* or his Subcontractors in connection with the contract displays the vehicle licence disc relevant to the goods operator's licence under which the vehicle is operated or, in the absence of an operator's licence disc, the vehicle carries documentation giving the operator's licence number, name and address.

[If quality/price tender assessment is included in the invitation to tender, include the following clause.]

Quality submission

- Z7.** The *Contractor* warrants to the *Employer* that the representations contained in the Quality Submission section of his tender are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer*.

[If a quality management system is required include the following clause and call up Numbered Appendix 1/24 in the Works Information]

Quality management system

- Z8.** The *Contractor* operates a quality management system complying with BS EN ISO 9002 for his performance of the contract. The management, organisation, responsibilities, procedures, processes, resources and programme for the quality management system from design (where applicable) to procurement, construction, completion, testing and commissioning of the works until the defects date is contained in a quality plan which is in accordance with the Works Information. Any Subcontractor appointed by the *Contractor* operates a quality system enabling him to comply with the *Contractor's* quality management system.

[If the Contractor is required to accept risks for Statutory Undertakers' works, include clauses Z3, Z9 and Z30 and call up Numbered Appendix 1/16 in the Works Information.]

Responsibility for Statutory Undertakers

- Z9.1** The *Contractor* on behalf of the *Employer*
- identifies those measures which need to be taken as a consequence of or in order to facilitate the works with any Statutory Undertaker;
 - settles a specification for the measures which need to be taken and determines by whom those measures are to be taken with the Statutory Undertaker;
 - co-ordinates the taking of those measures and the execution of the works with the Statutory Undertaker;
- and the *Employer* as the *Contractor's* principal shall, subject to Clause Z9.2, pay the Statutory Undertaker's allowable costs in respect of these measures.

Z9.2 The *Contractor*

- is responsible (at no cost to the *Employer*) for ensuring the Statutory Undertaker's compliance with any agreement or arrangement entered into under Clause Z9.1;
- indemnifies and keeps indemnified the *Employer* against all claims demands actions and proceedings, and all costs charges and expenses incurred in connection therewith, which may be brought or made by any Statutory Undertaker in respect of loss of or damage to any property of the Statutory Undertaker or the increased cost of working or business interruption of the Statutory Undertaker under or in connection with any agreement or arrangement entered into under Clause Z9.1 with the Statutory Undertaker howsoever arising including but not limited to the negligence or default of the *Contractor*.

Z9.3 The *Contractor* allows in the programme required under Clause 31 [The programme] any notice period required by a Statutory Undertaker in relation to any matter which is the subject of Clause Z9.1 and for all periods required in the taking of measures which are the subject of Clause Z9.1.

[If the *Contractor* is required to name key personnel at tender stage include clauses Z10 below.]

Named key personnel

- Z10.1** Acceptance by the *Employer* of key persons stated in Contract Data Part Two does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the *Contractor* of his duties or obligations under the contract.
- Z10.2** The *Contractor's Site Agent* means the person named in Contract Part Two being the most senior member of the *Contractor's* professional personnel normally present on Site.
- Z10.3** The *Contractor's Site Safety Officer* named in Contract Data Part Two is responsible for dealing with questions regarding the safety and protection against accidents of all staff and labour and all other persons entitled to be on the Site. This officer shall be qualified for this work and shall have the authority to issue instructions on behalf of the *Contractor* and shall implement protective measures to prevent accidents.
- Z10.4** The *Contractor's Quality Manager* named in Contract Data Part Two manages the *Contractor's* obligations arising under Clause Z8 (Quality management system) and is the person to whom the *Project Manager* may take any enquiries in relation to the performance of such obligations.
- Z10.5** The *Contractor's General Foreman* named in Contract Data Part Two is responsible for carrying out control and coordination on Site as required by *Contractor's Site Agent*.
- Z10.6** The *Contractor's Traffic Safety and Control Officer* named in Contract Data Part Two is responsible for traffic safety and management.
- Z10.7** The *Contractor's Designer* named in Contract Data Part Two is responsible for undertaking design work to ensure compliance with the Construction (Design and Management) Regulations 1994 or any amendment or substitution thereof.

Note: Z10.4 to Z10.7 are optional clauses to suit project-specific requirements.

[If the Contractor is required to name subcontractors at tender stage include the following clause]

Named subcontractors

- Z11.1** Where the Contractor has nominated a Subcontractor in Contract Data Part Two for part of the works, acceptance of Contract Data Part Two by the Employer without qualification of such nomination is deemed to be a consent on the same legal basis as consent by the Project Manager under Clause 26.2. Any such Subcontractor is not be removed by the Contractor from the part of the works for which he has been nominated without the prior written consent of the Project Manager.
- Z11.2** Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the Project Manager relieves the Contractor of any liability or obligation under the contract.
- Z12.** Delete the first sentence of core clause 51.1 and replace with:-
“The Project Manager certifies a payment on or before the date on which a payment becomes due.”
- Z13.** Delete the first sentence of core clause 51.2 and replace with:-
“Each certified payment is made on or before the final date for payment.”

Recovery of Sums Due from Contractor

- Z14.** When under the contract any sum of money is recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under the contract or any other contract with any Department or Office of Her Majesty's Government.

[If the contract has an extended defects period, include the following clause and Appendix C]

Retention bond

- Z15.** If after the issue of the Completion Certificate for the whole of the works the Contractor wishes to be paid the balance of the retention monies then he submits to the Project Manager a retention bond in substantially the same form as appearing in Appendix C for the amount of such retention monies and issued by a surety acceptable to the Employer. Upon receipt of the retention bond the Employer releases the balance of the retention monies to the Contractor. The retention bond is returned by the Employer to the Contractor upon the issue of the Defects Certificate.

Dates for payment

- Z16.1** For the purpose of Sections 109 and 110 of the Housing Grants, Construction and Regeneration Act 1996,
- the Project Manager's certificate is the notice of payment from the Employer to the Contractor specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated,
 - the date on which a payment becomes due is seven days after the assessment date and
 - the final date for payment is 28 days after the date on which the payment becomes due.

Z16.2 If the *Employer* intends to withhold payment after the final date for payment of a sum due under the contract, he notifies the *Contractor* not later than one day (the prescribed period) before the final date for payment by specifying

- the amount proposed to be withheld and the ground for withholding payment or
- if there is more than one ground, each ground and the amount attributable to it.

[The following clauses relating to bonus payments and lane rental charges are optional.]

Bonus for early Completion

Z17. The *Contractor* is paid a bonus calculated at the rate stated in Contract Data Part One for each whole day from the earlier of

- Completion and
- the date on which the *Employer* takes over the works

until the Completion Date provided that he has removed all traffic management installations and has reopened the carriageway in a safe condition to the satisfaction of the *Supervisor* so as not to cause traffic flows to be impeded or restricted.

Lane rental charge for late Completion

Z18.1 The *Contractor* pays a lane rental charge at the rate stated in Contract Data Part One from Completion Date for each day or part thereof until the earlier of

- Completion and
- the date on which the *Employer* takes over the works

if he fails to remove all traffic management installations and re-open the carriageway in a safe condition to the satisfaction of the *Supervisor* so as not to cause traffic flows to be impeded or restricted. Lane rental charges shall as they fall due be debts due from the *Contractor* to the *Employer* and shall be recoverable as a debt.

Z18.2 If the Completion Date is changed to a later date after lane rental charges have been paid, the *Employer* repays the amount of such overpayment to the *Contractor*.

Lane rental charge for maintenance work

Z19.1 The *Contractor* pays a lane rental charge at the rate stated in Contract Data Part One from Completion for each day or part thereof until the defects date if he occupies any part of any carriageway footway or cycleway and causes traffic flows on any carriageway to be impeded or restricted for the purposes of correcting Defects.

Z19.2 Lane rental charges shall as they fall due be debts due from the *Contractor* to the *Employer* and shall be recoverable as a debt.

Bonus for timely daily clearance of carriageway

Z20. The *Contractor* is paid a bonus calculated at the rate stated in Contract Data Part One for each day that he occupies any part of any carriageway in order to Provide the Works from the *possession date* until the earlier of

- the Completion Date and
- the date on which the *Employer* takes over the *works*

provided he has removed all traffic management installations and has reopened the carriageway in a safe condition to the satisfaction of the *Supervisor* so as not to cause traffic flows to be impeded or restricted between the following hours:

- [0600] hours and [2200] hours of each day.

Clause Z32 may be used with the following clause:

Lane rental charge for late daily clearance of carriageway

Z21.1 The *Contractor* pays a lane rental charge at the rate stated in Contract Data Part One for each day or part thereof if on any day he fails to remove all traffic management installations and re-open the carriageway in a safe condition to the satisfaction of the *Supervisor* so as not to cause traffic flows to be impeded or restricted between the following hours:

- [0600] hours and [2200] hours of each day.

Z21.2 Lane rental charges shall as they fall due be debts due from the *Contractor* to the *Employer* and shall be recoverable as a debt.

[The following clauses Z22, Z24 and Z25 which transfer ground and weather risks to the Contractor are all optional and may be included or excluded at the project manager's discretion.]

Physical conditions or artificial obstructions

Z22.1 Delete core clause 60.2 (Compensation events) and replace it with the following:-

Z22.2 In judging the physical conditions, the *Contractor* is deemed to have taken into account within his Prices the following actions:

- inspected and examined the Site and its surroundings and any existing structures or works on, over or under the Site relevant to the construction of the *works*;
- satisfied himself as to the nature of the climatic, hydrological and general conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, the risk of damage or injury to property adjacent to the Site and to occupiers of such property, the risk of pollution and damage to the environment, the nature of materials (whether natural or otherwise) to be excavated, the presence on or within the Site of hazardous or toxic substances or waste (save those referred to in Clause 80.1 (*Employer's risks*)) and the nature of the work and Plant and Materials necessary for the construction of the *works*;

- satisfied himself as to the means of communication with and access to and through the Site, the accommodation he may require, the possibility of interference by persons other than the *Employer* with access to or use of the Site other than as detailed in Clause 80.1 (*Employer's* risks) after the *Employer* has given to the *Contractor* access to the Site with particular regard to the requirements and potential requirements of Others and the precautions and the times and methods of working necessary to prevent unreasonable nuisance or interference, whether public or private, being caused to any Others;
- in general obtained for himself all necessary information, including Site Information, as to risks, contingencies and all other circumstances which may influence or affect the Prices, his obligation to construct, complete, test, commission and maintain the works until the defects date and his other obligations under the contract.

Work suspension

Z23. Suspension of performance is a compensation event if the *Contractor* exercises his right to suspend performance under the Housing Grants, Construction and Regeneration Act 1996.

Notice of physical conditions or artificial obstructions

Z24.1 If during construction of the works the *Contractor* encounters physical conditions or artificial obstructions which could not reasonably have been foreseen by an experienced contractor and the *Contractor* is of the opinion that significant delay will be caused which would not have been caused if such conditions had not been encountered, he gives notice to the *Project Manager* stating:

- the physical conditions and/or artificial obstructions encountered;
- the anticipated effect on the works, including delay;
- the measures proposed or being taken to minimise or avoid the effects of the delay.

Z24.2 Following receipt of a notice under Clause Z24.1 the *Project Manager* shall within the period for reply either:

- accept in writing the measures which the *Contractor* is proposing to take in order to deal with the physical conditions or artificial obstructions; or
- give reasons for not accepting the *Contractor's* proposals and allow the *Contractor* to resubmit his proposals in accordance with Clause Z24.3; or
- instruct the *Contractor* to stop work under Clause 34.1 or instruct a change under Clause 14.3.

Z24.3 If the *Project Manager* decides that the whole or some part of the physical conditions or artificial obstructions could not reasonably have been foreseen by an experienced contractor and is satisfied that the *Contractor* used best endeavours to minimise any delay in the progress of the works caused by such conditions or obstructions he shall take any such delay into account in determining any adjustment to the Completion Date to which the *Contractor* may be entitled under the contract and unless the *Project Manager* has instructed a change pursuant to Clause 14.3 any cost incurred in carrying out any additional work and of using additional Plant and Materials shall notwithstanding any other provision of the contract be deemed to have been included in the Prices and borne by the *Contractor*.

[Note: use discretion on whether to delete all or any of the following compensation events.]

Z25. Delete the following core clauses (Compensation events):-

- 60.1 (12) physical conditions
- 60.1 (13) weather
- 60.1 (15) early take over of works
[note: leave this clause intact if HA's bonus for early completion is used]
- 60.3 inconsistent Site Information

Settlement of disputes

Z26.1 Delete core clauses 90.1 and 90.2 and replace with the following Z clauses:-

Z26.2 Should any dispute or difference arise between the *Employer* and the *Contractor* under this contract, either party may give notice ("Notice") in writing requiring the dispute to be considered by adjudication and the dispute shall thereafter be referred and considered in accordance with the said procedure.

Z26.3 The Construction Industry Council's Model Adjudication Procedure, Second Edition, dated November 1998 and any amendments or alterations thereto current at the date of the Notice shall apply to any adjudication under this contract, save for the purposes of paragraph 12 the Adjudicator shall be appointed on the terms and conditions set out in the relevant form of agreement issued by the *Employer*.

Review by the tribunal

Z27.1 Delete core clauses 93.1 and 93.2 and replace with the following Z clauses:-

Z27.2 Neither party shall be entitled to serve Notice to Refer until the adjudicator has delivered his adjudication in accordance with the provisions of the said procedure. Thereafter, if either party is dissatisfied with the adjudication, except in connection with the enforcement of the adjudicator's decision, he may then invoke arbitration by serving a Notice to Refer (a "Notice to Refer") on the other party.

Z27.3 The Notice to Refer shall list the matters which the issuing party wishes to be referred to arbitration.

Z27.4 If a Notice to Refer has been served in writing by one party upon the other then the dispute shall be referred to arbitration by a single arbitrator to be agreed by the *Employer* and the *Contractor* or, failing any such agreement, to be nominated by any one of the following persons as the Employer shall, in his absolute discretion, direct:-

- the President of the Institution of Civil Engineers or in his absence or unavailability his deputy;
- the President of the Institution of Electrical Engineers or in his absence or unavailability his deputy;
- the President of the Chartered Institute of Arbitrators or in his absence or unavailability his deputy;

- Z27.5** The Institution of Civil Engineers Arbitration Procedure (England and Wales) 1997 and any amendments or alterations thereto current at the date of Notice to Refer shall apply to any arbitration under this contract.
- Z27.6** Any arbitration shall be in accordance with and subject to the provisions of the Arbitration Acts 1950 and 1996 or any statutory amendments or re-enactments for the time being in force.
- Z28.** Delete the following core clauses:-
- clause 91 (The adjudication)
 - clause 92 (The Adjudicator)

[For contracts valued at £2m and over or where considered desirable, include the following clause relating to Parent Company Guarantee and Appendix A]

Parent Company Guarantee

- Z29.** Within 14 days of the date of the acceptance of the contract the Contractor shall, if required and if he has not already done so as a condition of acceptance, submit to the Employer a Parent Company Guarantee in substantially the same form as appearing in Appendix A: Form of Parent Company Guarantee.

Special Requirements

- Z30.** The Contractor
- complies at his own cost with all Special Requirements of Statutory Bodies as set out in Appendix D
 - is not excused from the performance of any of his obligations under the contract or is entitled to any allowance of time or to any additional remuneration or compensation in consequence of the requirement to comply with this Clause
 - acknowledges and agrees that the Employer does not warrant and has not warranted the accuracy or completeness of any data or information which has been or will be provided to the Contractor by the Employer or the Project Manager relating to the location, size, nature or condition of services in, on, over or under the Site or in the vicinity of the Site
 - further acknowledges and agrees that he neither has nor will have any claim of any kind whatsoever against the Employer founded upon the accuracy or completeness of any such data or information.

Tax and National Insurance Contributions

- Z31.** This contract falls within the scope of the Construction Industry Scheme Regulations. If the Contractor (Subcontractor in terms of the Scheme) does not hold a valid Inland Revenue Subcontractor Tax Certificate (CIS5 or CIS6) and is not a local authority or other public body exempt from holding such a certificate, invoices (and any applications for payment submitted by the Contractor) shall separately identify the cost of labour. The Employer shall deduct payment in accordance with the requirements of the Construction Industry Scheme.

[Note: the following clause may be used if the lane rental/bonus clauses are used. Core clause 60 (13) on weather must be deleted.]

Effects of Weather on Work

Z32.1 No work is done when in the opinion of the *Supervisor* the weather conditions are such as to make the start or continuance of work undesirable and/or impracticable. In such circumstances the *Supervisor* will issue a certificate to the *Contractor* provided

- the *Contractor* has taken all reasonable steps to mitigate the effects of such weather conditions and
- the timely execution of the work is critical to the *Contractor's* Accepted Programme.

Z32.2 For purposes of the contract

- only continuous periods of 4 hours or more for which a certificate has been issued by the *Supervisor* are taken into account for calculating changes to the Completion Date
- the Prices are not changed due to any costs associated with this clause
- the *Contractor* does not pay lane rental charges (clauses Z18 and Z21) for periods covered by such a certificate.

[Note: the following clause may be used to encourage a contractor to optimise the project's design.]

Value Engineering

Z33.1 The *Contractor* may at any time prior to or during the carrying out of the works submit to the *Project Manager* written proposals to change the Works Information which, in the *Contractor's* opinion, will significantly reduce the cost of the works or the cost of maintenance. Any proposal clearly states it is submitted for consideration under this clause and includes a detailed quotation, for consideration by the *Employer*, setting out the amount to which the *Contractor* may be entitled on the basis that he, the *Employer* and the *Project Manager* shall share [50%], [40%] and [10%] respectively of the relevant savings as determined in accordance with clause 63 (Assessing Compensation Events).

Z33.2 Quotations for proposed savings comprise proposed changes to the Prices and any delay to the Completion Date. The *Contractor* submits details of his assessment with each quotation. If the programme for remaining work is affected by the proposal the *Contractor* includes a revised programme in his quotation showing the effect.

Z33.3 If the *Employer* accepts such a proposal the *Project Manager* gives an instruction to the *Contractor* within the [period for reply] which changes the Works Information.

[Note: the following clauses, Z34 and Z35, may be used where the *Contractor* is required to design temporary works.]

Definition of Temporary Works

Z34. "Temporary Works" means all works (other than the works) required in or about the execution of the works and includes traffic management and any ground condition investigations and surveys.

Temporary Works Check Certificate

Z35. All design particulars for Temporary Works prepared by the *Contractor* and submitted to the *Project Manager* in accordance with Clause 21.2 are to be accompanied by a Temporary Works Check Certificate in the form set out in Part IV of Appendix B and signed by an engineer other than the engineer who prepared the design who has the appropriate qualifications and experience and is from either the *Contractor* or a professional design organisation.

[Note: The following clauses, Z36, Z37 and Z38, may be used with option B projects to transfer risks in the bill of quantities to the Contractor. If these clauses are used, also include clauses Z22, Z24 and Z25.]

Risk transfer in bill of quantities

Z36.1 The quantities set out in the *bill of quantities* are deemed to be the actual quantities of the works and the *Contractor* satisfies himself that the description of the works and the quantities set out in the *bill of quantities* correctly and accurately describe the works to be executed by the *Contractor* in fulfilment of his obligations under the contract.

Z36.2 The *Contractor* bears the risk of any errors in the quantities and descriptions of the *bill of quantities* or omission therefrom and the same does not relieve the *Contractor* from any of his obligations and liabilities under the contract. Any such error or omission is corrected by the *Contractor* entirely at his own cost and without prejudice to the *Employer's* rights under Clause R1 (Delay damages) and the *Contractor* is not entitled to an adjustment of the Completion Date for any delay caused thereby. The *Contractor* submits details of any changes to the *bill of quantities* to the *Project Manager* for information purposes.

Z36.3 The Prices are not altered or adjusted in any way whatsoever other than in accordance with the express provisions of the contract. Any error whether of an omitted item or not in the computation of the Prices is deemed to be accepted by the *Contractor*.

Price for Work Done to Date

Z37 Add the following wording to core clause 11.2 (25) after the words “multiplied by the rate” at the end of the first bullet point -

“except that no account is taken of quantities exceeding those stated in the *bill of quantities* at the Contract Date.”

Quantity of work done

Z38 Delete core clause 60.5 (Compensation event).