
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

SUMMARY

This Model Contract Document gives guidance and model documentation for use with ICE's Engineering and Construction Contract in England. The Model supersedes and replaces the version dated April 1999 and all subsequent amendments.

INSTRUCTIONS FOR USE

This is a revised document to be incorporated in the Manual.

1. Remove existing contents page for Volume 0 and insert new contents page for Volume 0 dated November 2001.
2. Remove Model Contract Document for Engineering and Construction Contract - England dated April and August 1999 from Volume 0, Section 1, Part 7 of the Manual and archive as appropriate.
3. Insert Model Contract Document for Engineering and Construction Contract - England dated November 2001 into Volume 0, Section 1, Part 7.
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.

**MANUAL OF CONTRACT DOCUMENTS FOR
HIGHWAY WORKS**



THE HIGHWAYS AGENCY

Model Contract Document for Engineering and Construction Contract - England

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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
ENGINEERING AND CONSTRUCTION
CONTRACT - ENGLAND**

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Notes to tender compilers:

(M) means a mandatory Z clause to be included in all contracts. All other clauses are optional and may be included or deleted as considered appropriate. If deleted, put "Not Used" against Z number.

All guidance notes relating to Z clauses are given in Annex B.

Intellectual property rights

- Z1. The *Contractor* assigns to the *Employer* all present and future intellectual property rights in any material created by or on behalf of the *Contractor* in Providing the Works.

Corrupt practices

- Z2. The *Contractor* does not:
- offer or give 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
 - enter 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.

Principal contractor

- Z3. The *Employer* appoints the *Contractor* to act as principal contractor for the purposes of the Construction (Design and Management) Regulations 1994 (1994 S.I. 3140).

Confidentiality

- Z4. The *Contractor*:
- has the right to use the Works Information or any other material relating to the *works* only for the purposes of providing the *works* and may make this right available to Sub-contractors
 - returns the Works Information or any other material relating to the *works* to the *Employer* at the expiry of the *defects date*
 - does not disclose information obtained in connection with the *works* or this contract to any other person without the *Employer's* written consent.

Partnering

- Z5. No partnering agreement which the parties may enter into (with or without other parties) in connection with the *works* is intended to create legally enforceable rights or obligations between the parties or to affect the terms of this contract.

Goods vehicles operator's licence

- Z6. Each goods vehicle used by the *Contractor* or his Sub-contractors 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.

Quality statement

- Z7.1 The *quality statement* sets out the *Contractor's* proposals for the management and resourcing of the *works*.
- Z7.2 The *Contractor* warrants:
- that the representations contained in the *quality statement* 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*
 - that the *quality statement* does not constitute a qualification to his tender. Should any discrepancy arise between the *quality statement* and other contractual documents, the Works Information takes precedence.

Quality management system

- Z8.1 The *Contractor* operates a quality management system which:
- complies with the relevant parts of BS EN ISO 9001 and 9002
 - incorporates appropriate *sector quality schemes* for highways works, and
 - has third party certification from an approved accreditation body or is operating in preparation for accreditation within six months of the Contract Date.
- Z8.2 Prior to the *starting date* the *Contractor* prepares a quality plan and submits it to the *Project Manager* for acceptance. The quality plan incorporates:
- the *quality statement*
 - appropriate *sector quality schemes*, and
 - requirements stated in the Works Information.
- A reason for not accepting the quality plan is that:
- it is inadequately prepared or is not practicable
 - it does not incorporate the information which this clause requires or
 - it does not represent a realistic approach for the *works*.
- Z8.3 Any Sub-contractor appointed by the *Contractor* operates a quality system enabling him to comply with the *Contractor's* quality management system.

Responsibility for Statutory Bodies

- 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 Body*
 - settles a specification for the measures which need to be taken and determines by whom those measures are to be taken with the *Statutory Body*
 - co-ordinates the taking of those measures and the carrying out of the *works* with the *Statutory Body*
- and the *Employer* as the *Contractor's* principal pays the *Statutory Body's* allowable costs in respect of these measures.

Z9.2 The *Contractor*:

- is responsible (at no cost to the *Employer*) for ensuring the *Statutory Body's* compliance with any agreement or arrangement entered into under Clause Z9.1
- indemnifies and keeps indemnified the *Employer* against:
 - claims, demands, actions and proceedings
 - costs, charges and expenses arising therefrom
 - loss of or damage to any property
 - increased cost of working or
 - business interruption

which may be brought or made by any *Statutory Body* in connection with such an agreement or arrangement including but not limited to the negligence or default of the *Contractor*.

Z9.3 The *Contractor* allows in his Accepted Programme any notice period required by a *Statutory Body* in relation to any matters and measures under clause Z9.1.

Named key persons

Z10.1 Acceptance by the *Employer* of key persons stated in the Contract Data 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* employs the following key persons for this contract named in the Contract Data:

- the *Contractor's Director* has overall responsibility for the management, planning and organisation of this contract
- the *Contractor's Site Agent* is the most senior member of the *Contractor's* professional personnel normally present on Site
- the *Contractor's Site Safety Officer* is responsible for dealing with safety and protection against accidents of all persons employed by or contracted to the *Contractor* on the Site and all other persons entitled to be on the Site. This person is an appropriately qualified and experienced engineer with the authority to issue instructions and implement protective measures to prevent accidents and is exclusively appointed to this role
- the *Contractor's Deputy Site Safety Officer* who is capable of performing the required duties on the same basis as, and in the absence of, the *Site Safety Officer*. His role is not required to be an exclusive appointment and may be combined with other duties on Site
- the *Contractor's Quality Manager* is responsible for implementing the *Contractor's* Quality Plan on Site. The person appointed is suitably qualified and experienced to undertake this role. He is the main point of contact for the *Supervisor* on all quality issues. His role is not required to be an exclusive appointment and may be combined with other duties on Site
- the *Contractor's Traffic Safety and Control Officer* is responsible for traffic safety and management. This person is exclusively appointed to this role and attends all traffic management meetings. He is present on Site at all critical times when traffic management is installed, removed or changed in order to enforce safety procedures and standards as specified in the Works Information
- the *Contractor's Deputy Traffic Safety and Control Officer* who is capable of performing the required duties on the same basis as, and in the absence of, the *Traffic Safety and Control Officer*. His role is not required to be an exclusive appointment and may be combined with other duties on Site

- the *Contractor's Designer* is responsible for undertaking design work to ensure compliance with the Construction (Design and Management) Regulations 1994 or any amendment or substitution thereof
- the *Contractor's General Foreman* is responsible for carrying out control and coordination on Site as required by the *Contractor's Site Agent*.

Named Sub-contractors

Z11. The *Contractor*:

- incorporates Option X12 into the subcontracts with all Sub-contractors identified in the Contract Data if Option X12 is used in this contract
- is not relieved from any liability or obligation under this contract if:
 - the *Employer* objects to or fails to object to a proposed Sub-Contractor or
 - the *Project Manager* issues an instruction to remove a Sub-contractor. Reasons for removal of a Sub-contractor include:
 - inadequate or poor quality of workmanship
 - incompetent or negligent performance
 - uncooperative or disruptive working practices
 - failure to operate a quality management system.

The *Contractor* then arranges the removal of the Sub-contractor and the appointment of a replacement in accordance with this contract. An instruction to remove a Sub-contractor is not a compensation event.

Either:

Payment certification

Z12.1 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.”

Z12.2 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.”

Or:

Payment certification and profiling

Z12A.1 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. In respect of any *residual sum* outstanding the payment “due date” is the *date of residual payment*.”

Z12A.2 Add the following new sentence at the end of core clause 50.2:

“The amount due is paid in accordance with the Payment Profile Table in the Contract Data.”

Z12A.3 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 provided that the *maximum payment* for the *period of payment* for which the certificate is submitted is not exceeded.”

Z12A.4 Add the following new sentence at the end of core clause 51.2:

“For the avoidance of doubt, any *residual sum* certified for payment by the *Project Manager* in respect of a *period of payment* becomes overdue for the purposes of this clause to the extent that it remains unpaid after the final date for payment.”

Accidents on Site

Z13. The *Contractor* reports to the *Project Manager* details of any serious accident or fatality to any person employed by or contracted to him on the Site as soon as possible after an accident occurs.

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 after may become due to the *Contractor* under this contract or any other contract with any Department or Office of Her Majesty’s Government.

Retention bond

Z15.1 On issue of the Completion Certificate for the whole of the *works* the *Employer* agrees to release all retained monies if the *Contractor* provides the *Employer* with a retention bond which is:

- provided by a bank or insurer which the *Employer* has accepted
- in the form required by Contract Data part one and
- for an amount equivalent to the amount of retention then held by the *Employer*.

Z15.2 A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond.

Z15.3 The *Employer* releases the retention bond to the *Contractor* on the last *defects date*.

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 30 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.

Bonus for early completion

Z17. The *Contractor* is paid a *bonus for early completion* 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 charges for late completion

Z18.1 The *Contractor* pays *lane rental charges* 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. As they fall due *lane rental charges* are debts due from the *Contractor* to the *Employer* and are 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 charges for maintenance work

Z19.1 The *Contractor* pays *lane rental charges* from Completion for each hour 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 As they fall due *lane rental charges* are debts due from the *Contractor* to the *Employer* and are recoverable as a debt.

Bonus for daily clearance of carriageway

Z20. The *Contractor* is paid a *bonus for daily clearance of carriageway* 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.

Lane rental charges for late daily clearance of carriageway

- Z21.1 The *Contractor* pays *lane rental charges* for each hour 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 As they fall due *lane rental charges* are debts due from the *Contractor* to the *Employer* and are recoverable as a debt.

Effects of weather on work

- Z22.1 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.
- Z22.2 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* for periods covered by such a certificate.

Physical conditions

- Z23.1 Delete clause 60.2 and replace with the following:
- Z23.2 In judging the physical conditions, the *Contractor* is deemed to have taken into account within his Prices the following actions:
- carried out an inspection and examination of the Site, 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 form and nature of the Site in regard to:
 - climatic and hydrological conditions
 - ground and subsoil conditions
 - risks of damage to property adjacent to the Site
 - risks of injury to occupiers of such property
 - restrictions or precautions relating to nearby farmland
 - risks of pollution and damage to the environment
 - materials (whether natural or otherwise) to be excavated
 - presence of hazardous or toxic substances or waste and
 - types of Plant and Materials required to construct the *works*

- satisfied himself as to:
 - means of communication with the Site
 - access to and through the Site
 - accommodation requirements
 - requirements of others for access to the Site
 - interference by persons with access to or use of the Site
 - risks of interference by protesters or trespassers
 - precautions to prevent nuisance or interference by third parties
 - in general obtained for himself:
 - all necessary information as to risks
 - all necessary Site Information
- so as to meet his obligation to Provide the Works.

Notice of physical conditions

Z24.1 If the *Contractor*:

- encounters physical conditions which in his opinion could not reasonably have been foreseen at the Contract Date by an experienced contractor and
- considers that significant delay will be caused by such physical conditions, he gives notice to the *Project Manager* stating:
 - the nature, extent and type of physical conditions encountered
 - the reasons for not foreseeing them at the Contract Date
 - the measures being taken (or proposed) to overcome them
 - the effect if any on the quality or durability of the *works*
 - the effect if any on the Accepted Programme
 - the forecast Actual Cost of any necessary extra work.

Z24.2 Within the *period for reply* the *Project Manager* either:

- notifies the *Contractor* that he has no objections to the measures being taken or proposed because the physical conditions concerned are risks identified and transferred to the *Contractor* under clause Z23. The *Contractor* then implements such measures at his own cost in order to carry out his obligations under the contract, or
- notifies the *Contractor* of his reasons for not accepting the measures. Reasons for not accepting them include:
 - they are not realistic, practicable or cost effective
 - they will reduce the quality or durability of the *works*
 - they will add to the *Employer's* costs of maintaining the *works*
 - they will not allow the *Contractor* to Provide the Works, or
- notifies the *Contractor* of his acceptance of such measures. The *Project Manager* then gives an instruction to change the Works Information.

Compensation events

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

- 60.1 (12)
- 60.1 (13)
- 60.1 (15)
- 60.3
- 60.4
- 60.5
- 60.6

Work suspension

Z26. 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.

Settlement of disputes

Z27. Delete core clauses 90, 91 and 92 and substitute:

- Z27.1 Either party may give notice to the other party at any time of his intention to refer a dispute to adjudication. The notifying party refers the dispute to the *Adjudicator* within seven days of the notice.
- Z27.2 The procedure for an adjudication is that set out in the Construction Industry Council's Model Adjudication Procedure issued November 1998, together with any amendments to that procedure current at the commencement of the adjudication and as amended as follows:
- each time it appears the word "Adjudicator" is replaced by "*Adjudicator*"
 - paragraph 4 is amended to read as follows: "The *Adjudicator's* decision shall be binding until the dispute is finally determined by the *tribunal* or by agreement."
 - the words "legal proceedings or arbitration" in paragraph 5 are deleted and replaced with the words "the *tribunal*"
 - the following is added to the end of paragraph 5: "The *Adjudicator's* decision shall be enforceable as a matter of contractual obligation between the Parties and not as an arbitral award."
 - paragraph 7 is deleted
 - the words "and the Parties shall accept that body's nomination" is added to the end of the second sentence in paragraph 10
 - the words "and the Parties shall accept that body's nomination" are added to the end of the first sentence in paragraph 11
 - the following is added to the end of paragraph 11: "The replacement *Adjudicator* shall have the power to decide on disputes that were submitted to his predecessor but a decision had not been given at the time when his predecessor resigned or became unable to act. The date of his appointment is the date of submission of these disputes to him as *Adjudicator*"
 - the following is added to the end of paragraph 24: "The *Adjudicator* shall provide reasons to the Parties."
 - the following is added to the end of paragraph 26: "The *Adjudicator's* powers shall include the power to review and revise any action or inaction of the *Project Manager* related to the dispute."

- paragraph 27 is deleted and replaced by the following: “If the *Adjudicator’s* decision includes assessment of additional cost or delay caused to the *Contractor*, he shall make his assessment in the same way as a compensation event is assessed.”
- the first sentence in paragraph 30 is deleted and replaced with the following: “Unless and until the dispute has been determined by the *tribunal* or by agreement, the Parties shall be entitled to the redress set out in the decision and to seek summary enforcement.”
- the words “legal proceedings or arbitration” and “court or arbitrator” in paragraph 31 are deleted and replaced by the words “the *tribunal*” and “*tribunal*” respectively
- a new paragraph 36 is added and reads as follows: “Any communication between a Party and the *Adjudicator* shall be communicated to the other Party.”

Z27.3 The *Adjudicator* is appointed by the parties on the terms and conditions set out in the *Adjudicator’s* appointment.

Review by the *tribunal*

Z28. Core clause 93 is deleted and replaced by the following:

Z28.1 Neither party is entitled to serve a notice of referral to the *tribunal* until the *Adjudicator* has delivered his adjudication in accordance with clause Z27. Thereafter, if either party is dissatisfied with the adjudication, except in connection with the enforcement of the adjudicator’s decision, he may then refer the dispute to the *tribunal* by serving a notice to refer (a “Notice to Refer”) on the other party provided that the referring party has notified the other party of its intention to do so not more than four weeks after the end of the time allowed for the *Adjudicator’s* decision.

Z28.2 The Notice to Refer lists the matters which the issuing party wishes to be referred to the *tribunal*. If a Notice to Refer has been served in writing by one party on the other then the dispute is referred to the *tribunal* acting as a single person 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 Chartered Institute of Arbitrators or in his absence or unavailability his deputy.

Protesters and trespassers

Z29.1 From the *possession date* (or dates of actual possession) of the Site or a part of the Site until Completion of the *works*, the *Contractor*:

- takes full responsibility for any protester or trespasser on or around or entry onto or around the Site or any other interference with or affecting the Site or the vicinity of the Site or the carrying out of the *works* and for any act, omission or default of any such person
- bears without recourse to the *Employer* all costs, expenses and claims arising out of action caused by protesters or trespassers including:
 - loss suffered by any person
 - damage to property
 - personal injury or death
 - increased cost of working
 - loss of income or
 - business interruption

- takes lawful measures at his own expense against protesters or trespassers to:
 - remove them from the Site
 - prevent them from entering onto the Site and
 - prevent them from causing any material interference with the Site.

Z29.2 Lawful measures by the *Contractor* include:

- legal proceedings, counterclaims, third party claims and contribution claims
- enforcement of Court orders
- enforcement of all rights vested in, or enjoyed by, the *Employer* in or over the Site, including but not limited to all rights of:
 - ownership
 - leasehold tenure
 - possession and occupation and
 - all easements.

Z29.3 Where authorised by the *Employer*, legal proceedings may be made in the name of, and on behalf of, the *Employer*.

Special requirements of Statutory Bodies

Z30. The *Contractor*:

- complies at his own cost with all special requirements of *Statutory Bodies*
- takes these special requirements into account in order to Provide the Works
- acknowledges that the *Employer* does not warrant the accuracy or completeness of any data or information 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
- acknowledges that he neither has nor will have any claim of any kind against the *Employer* based upon the accuracy or completeness of any such data or information.

Construction Industry Scheme

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

Third party rights

Z32 Other than the express rights of any third parties identified in Option X12 if used in this contract, the parties do not intend that any person who is not a party to this contract should have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

Value engineering

- Z33.1 The *Contractor* may submit to the *Project Manager* for acceptance written proposals to change the Works Information which if implemented will in the *Contractor's* opinion:
- enhance the quality or durability of the *works* or
 - improve the efficiency of carrying out the *works* or
 - reduce the cost to the *Employer* of maintaining the *works*.
- Z33.2 The *Contractor* includes with his proposals:
- the value of any savings that will arise
 - the effect if any on the Accepted Programme
 - proposed changes to the Prices.
- Z33.3 If the *Employer* accepts the *Contractor's* proposal the *Project Manager* gives an instruction to the *Contractor* within [21] days which changes the Works Information. Any consequential effects of implementing the proposals, including time or cost overruns, are borne by the *Contractor*. Any savings are shared between the *Contractor* and the *Employer* as follows:
- the *Project Manager* assesses the *Contractor's* share of the savings
 - the *Contractor's* share is the value of the savings multiplied by the *Contractor's value share percentage*
 - Prices are reduced by the value of the savings.

Design check certificate

- Z34. All design prepared by the *Contractor* and submitted to the *Project Manager* is supported by a design check certificate signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Contractor* he is a Sub-contractor.

Considerate Constructor Scheme

- Z35.1 The *Contractor*:
- registers the Site under the Considerate Constructor Scheme
 - complies with the Considerate Constructor Scheme's Code of Considerate Practice in Providing the Works.

Risk transfer in bill of quantities

- Z36.1 The *Contractor*:
- satisfies himself that the quantities and descriptions set out in the *bill of quantities* correctly and accurately describe the *works*
 - bears at his own cost the risks of any errors or omissions in the *bill of quantities*
 - corrects at his own cost any errors or omissions in the *bill of quantities* and the Prices and the Completion Date are not changed
 - submits details of any changes to the *bill of quantities* to the *Project Manager* for information purposes.

Z36.2 The following wording is added to 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.”

Railway possessions

Z37. The *Contractor*:

- is paid a bonus for each *railway possession* not required below the number stated in the Contract Data
- pays a charge for each additional *railway possession* required above the number stated in the Contract Data. This charge as it falls due is a debt due from the *Contractor* to the *Employer* and is recoverable as a debt.

Aggregates Levy

Z38. The *Contractor*:

- from 1 April 2002 takes into account the Aggregates Levy of £1.60 per tonne introduced by section 16 of the Finance Act 2001
- is deemed to have included the Aggregates Levy and any associated expenses within his Prices. The effect of this levy is not a compensation event.

ANNEX B: GUIDANCE NOTES

[Note to tender compilers: these notes should not be included in contracts]

EXPLANATORY NOTES

Z1 Intellectual property rights

1. If the Contractor is required to design a part of or all of the works this clause should be included in the contract. A licence should be obtained from the Contractor giving the Employer the rights to use the design on the site involved and also to replicate the design anywhere on the road network.

Z2 Corrupt practices (M)

2. This is a standard government-type clause to safeguard against potentially unfair and illegal practices to win a contract.

Z3 Principal contractor (M)

3. This clause fulfills the Employer's obligation of appointing a "principal contractor" for the works as required by the Construction (Design and Management) Regulations 1994 (1994 S.I. 3140).

Z4 Confidentiality (M)

4. This is a standard government-type clause to protect the Employer against misuse or unauthorised disclosure of information about the works.

Z5 Partnering

5. The partnering objectives are intended to foster cooperation, early warning of problems and better management ideals that sit alongside, not substitute, contractual undertakings. The establishment of a partnering charter on individual works schemes is not intended to change the legal relationship of the parties to the contract nor relieve any party from its obligations under the contract. When formulating a Partnering Charter care must be taken that nothing is written into it that might override, modify or conflict with contractual undertakings. Z5 should be included in any contract where a non-contractual partnering arrangement is to be applied. Z5 should not be used if ECC's X12 Partnering Option is incorporated into the contract.

Z6 Goods vehicles operator's licence (M)

6. This clause is included in all contracts to prevent illegal use of goods vehicles on road construction schemes. The Highways Agency will inform the Vehicle Inspectorate Agency of the start of works at each construction site so as to give advance warning of significant movements of goods vehicles. The Vehicle Inspectorate Agency will then organise vehicle checks to ensure compliance with legal requirements.

Z7 Quality Statement

7. When quality/price is used for tender assessment it is necessary to seek a “Quality Statement” in support of each tender submitted. This statement will make various assertions and representations concerning resources, management and quality of the works. It is therefore important to ensure that the statement becomes enforceable in the contract by including clause Z7. The Quality Statement should not qualify the tender and if any discrepancy arises between the Quality Statement and other contractual documents, the Works Information will take precedence.
8. The Quality Statement is submitted by tenderers within a separate, identifiable, volume as part of their tender submission. It is later bound into the contract as part of Contract Data part two.

Z8 Quality management system

9. This clause requires the contractor to operate a quality management system complying with the relevant parts of BS EN ISO 9001 and 9002 for the performance of the contract. The contractor must hold third party certification from an approved accreditation body in order to operate his quality management system, or be able to prove that he is operating in preparation for accreditation within six months of the Contract Date.
10. The contractor is required to submit a quality plan before the starting date for acceptance by the Project Manager. The plan must include details from the Quality Statement, incorporate any appropriate sector quality schemes for highways works and comply with the requirements stated in the Works Information, in particular Numbered Appendix 1/24 which sets out requirements for a construction quality plan. If a design quality plan is required, requirements are set out on page 9/37, Part 6 (Design and Build - May 2000), Volume 0 of the Manual of Contract Documents for Highway Works. Any Sub-contractor appointed by the Contractor must also operate a quality management system enabling him to comply with the Contractor’s quality management system. A reason for not accepting the quality plan include:
 - it is inadequately prepared or is not practicable
 - it does not incorporate the information which this clause requires or
 - it does not represent a realistic approach for the *works*.
11. Tenderers are required to note the mandatory requirements for “sector quality schemes” and product type approvals. For example, the sector quality schemes include third party accreditation requirements for the supply and installation of boundary fencing, vehicle safety fencing, bridge parapets, road markings, traffic signals, traffic signs, lighting columns, electrical apparatus and cabling for highways, post-tensioning systems for concrete structures, temporary traffic management, surface dressing for road surfaces and asphalt mixes. These quality sector schemes also include mandatory training requirements for operatives. Product certification requirements include those set by the British Standards Institute and the British Board of Agrément. All of these requirements are set out in clause 104 of the Specification for Highways Works - see volume 1 of the Manual of Contract Documents for Highway Works published as ISBN 0 11 551979 3 by The Stationery Office.
12. A quality plan sets out all the procedures, processes, methods, techniques, resources, names of individuals and lines of responsibilities required for design (where applicable), supervision, testing, construction and commissioning requirements of the project. By contrast, the programme is an “action plan” setting out a series of construction phases and dates in which the works will be performed. Both the quality plan and programme are therefore complementary documents.
13. 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 long term cost savings in reduced maintenance. It is therefore a useful mechanism for improving quality workmanship for minimal cost.

Z9 Responsibility for Statutory Bodies

14. The intention behind Z9 is to transfer responsibility for Statutory Bodies' works to the contractor. This clause clearly states that the contractor *identifies* measures to be taken as a *consequence* of or in order to *facilitate* the works with any Statutory Body and then *settles* a specification to *implement* such measures. From this activity, a specification is required to be produced by the contractor setting out any consequential works (eg ducts, pits, manhole covers) as well as a specification to facilitate the Statutory Bodies' works. By its nature, preparing a specification will necessitate the contractor's judgement, expertise and design capabilities. The contractor is in the best position to determine such a specification because it needs to be prepared as a result of and to take account of site conditions and his working methods.
15. The Employer, as principal, will place orders for these works and settle accounts direct with the Statutory Bodies involved. However, the contractor is responsible for all other costs relating to the management, co-ordination and programming of Statutory Bodies' works, including design work, producing specifications and liaison with Statutory Bodies. These additional costs are deemed to have been included in the Contractor's proposals and tender price and no compensation events will be considered.
16. The Contractor undertakes to ensure that Statutory Bodies comply with any agreement or arrangement that he enters into with them and indemnifies the Employer against costs, claims, damages, loss of income and business interruption that might arise from these works. Also include clause Z30 and call up Numbered Appendix 1/16 in the Works Information - for a cost sharing formula please see page 9/31, Part 6 (Design and Build - May 2000), Volume 0 of the Manual of Contract Documents for Highway Works.

Z10 Named key persons

17. Naming key persons at tender stage is a quality initiative to ensure that people of the right experience and track record are employed on road construction contracts. Experience and track record of similar highways work are more important than paper qualifications.
18. 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 persons, 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.
19. CVs should be no longer than one A4 page in length, giving brief details, dates and roles played in previous road construction contracts. Bullet points in Z10 are optional and may be deleted to suit project-specific requirements.

Z11 Named Sub-contractors

20. 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 subcontractors not considered suitable for the area of work specified. It will stop temptation by a contractor after the award of contract to conduct "Dutch" auctions between sub-contractors that drive 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.
21. Z11 allows the Employer to object to the appointment of, or to instruct the removal of, a subcontractor without relieving the Contractor from any liability or obligation under the contract.

Either: **Z12 Payment certification (M)**
Or: **Z12A Payment certification and profiling (M)**

22. Z12 and Z12A amend core clause 51 in order to comply with the Housing Grants, Construction and Regeneration Act 1996. Choose either Z12 or Z12A depending on whether the scheme has payment profiling.
23. Payment profiling is a contractual device to allow the Highways 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. It must be borne in mind, however, that although payment profiling introduces cash limits during the actual profile period(s) this process of capping payments cannot be carried forward into the final financial year in which the construction is due to be completed. Because of this payments made in the final financial year will remain uncertain and subject to a catching up process to take account of cost overruns due to compensation events.
24. Despite final year payment uncertainty, the concept of payment profiling still remains extremely beneficial to the Agency in controlling work output and expenditure levels. It is widely accepted that payment levels under construction contracts are unpredictable due to uncertain factors such as fluctuations in weather, discovery of unforeseen ground conditions or design variations. Such fluctuations in payments are difficult to manage and control within current accounting procedures. By introducing cash limits on scheme expenditure forecasting and management of budgets will be greatly improved and result in more reliable cash flows for both the Agency and contractor.
25. 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 the Agency's best interests 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; it is more an attempt at harmonising work rates with a more stringent, but reasonable, payment regime.
26. In theory it should be possible to apply payment profiling to most contracts but in practical terms a suitable contract will need to straddle one or more financial years in order to gain the desired benefit from capping expenditure. Fast-track contracts of short duration and completed within a single financial year will not be suitable candidates. However, all other projects, including target cost contracts, above a reasonable threshold, say £3m and six months duration depending on the likely start date, can be considered as potential candidates. The best candidates, however, will be the larger capital projects.
27. The number of payment periods can be increased or decreased as necessary, but there must be at least two in any contract. The Start Date for each period should normally be the day after the End Date of the preceding period. The *date of residual payment* will normally be the beginning of the new financial year, starting from 6 April.
28. Payment profiling provides for an annual ceiling within which monthly profiles may be set (either in absolute terms or as a percentage of the tender price) on the amounts paid. Elements of the works included in the Schedule of Exclusion will be of a type that the Contractor would find difficult to price or plan, eg site security. If there are none, this should be stated.
29. The definition of *excluded monies* is restricted to retention monies that are payable but not yet paid or any monies paid or payable in respect of those areas of the *works* (if any) identified in the Schedule of Exclusion. Any retention money paid to the contractor (for example, in respect of sectional works) must be aggregated to the *maximum payment*.
30. If a due payment becomes payable within a particular *period of payment* but is delayed for whatever reason by the Highways Agency and is not actually paid until the following *period of payment*, responsibility for such a late payment must rest with the Highways Agency. In such circumstances, the amount of the late payment must not be aggregated to the *maximum payment* of the next *period of payment*.

Z13 Accidents on site (M)

31. This clause places a requirement on the Contractor to report any serious accident or fatality on Site to the Project Manager as soon as possible after an accident occurs. The Project Manager then reports the accident to the Employer by completing an internal (HAWSAR) form.

Z14 Recovery of sums due from Contractor (M)

32. This is a standard government-type clause allowing the Employer to recover any outstanding money due from the Contractor either by deduction under the contract or from any other contract with any Department or Office of Her Majesty's Government.

Z15 Retention bond

33. A retention bond is used for contracts with an extended defects period. It helps to relieve the contractor's cash flow. 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.
34. 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. Improved quality workmanship would lead in turn to cost efficiencies in respect of long-term maintenance requirements.
35. 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.

Z16 Dates for payment (M)

36. Z16 amends core payment clauses in order to comply with the Housing Grants, Construction and Regeneration Act 1996.

Z17 Bonus for early completion

Z18 Lane rental charge for late completion

Z19 Lane rental charge for maintenance work

Z22 Effects of weather on work

37. These four clauses operate in union. Z17 encourages the Contractor to complete the works early by offering a bonus payment for each day saved before the Completion Date provided traffic management installations are removed and the carriageway is reopened for use. Z18 encourages the Contractor to complete the works by the Completion Date to avoid incurring a lane rental charge. Z19 encourages the Contractor to minimise occupation time of a lane during the defects liability period by levying a lane rental charge. It also acts as an incentive for him to complete any outstanding work (snagging, etc) by the Completion Date. Z22 gives the Supervisor discretion to certify periods of non-work activity of not less than four hours due to bad weather conditions. In such circumstances, the Contractor is granted extra time, but not costs, to complete the works. These clauses are suitable for fast-track works such as carriageway resurfacing. Bonus amounts and lane rental charges are specified in Contract Data part one. When Z22 is used delete clause 60.1(13) for weather.

- 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 Effects of weather on work**

38. These four clauses operate in union and encourage night working. They allow a daily shift of 8-hours from, for example, 10pm (one night) to 6am (the next morning) by giving a bonus if the carriageway is reopened for traffic during the day between 6am and 10pm. Failure to reopen the carriageway from 6am incurs a lane rental charge. The “possession date” for this type of contract must be stated as “from 10pm on [date]”, not “from [date]”, otherwise the Contractor will lose 2 hours of working time. See above for comments on Z19 and Z22.

- Z23 Physical conditions**
- Z24 Notice of physical conditions**
- Z25 Compensation events**

39. These three clauses operate in union with the objective of achieving certainty of price. Z23 deletes the existing clause 60.2 in ECC and then re-introduces it as Z23 but written in a more robust and detailed manner to suit road construction. This clause sets out a number of risks that are all transferred to the Contractor. The tenderer (who then becomes the Contractor) has an obligation to visit the site in order to formulate his proposals. He must inspect and examine the site and satisfy himself on a number of risks relating to the Site. The Contractor is deemed to have taken into account such risks within his contract price.
40. It is important that all available information relating to site conditions, including surveys such as ground investigation, geodetic, archaeological, ecological, horticultural, etc, together with any environmental statement and all risk analysis data produced from risk workshops such as a risk register, are handed over to each tenderer under “Site Information”. This will help the tenderer to identify physical conditions and risks of the scheme, and to take them into account within his tender price.
41. The objective is to give to each tenderer as much factual information as possible about potential physical conditions and risks of the scheme. If a particular risk has been identified and graded the Contractor cannot then claim, if it materialises, that he has encountered a physical condition which could not reasonably have been foreseen by an experienced contractor. His claim can be rejected since he was informed of such a risk at tender stage and a prudent contractor would have taken account of such likelihood when formulating his tender price.
42. Z24 is used with Z23 as a means of enabling the Contractor to report to the Project Manager unexpected physical conditions that will cause delay to the Completion Date and to set out his measures to overcome them. The original intention behind Z24 was to stop the previous routine inflated claims under ICE5 when bad ground conditions were encountered. It places a responsibility on the Contractor to use his initiative and ingenuity (and to explain how that is being done) in resolving site problems. There is no intention on the Employer’s part to penalise or to profit from a Contractor’s misfortune provided the unexpected conditions and consequent delay are “genuine” occurrences. That is why the Project Manager is given wide discretion to decide on behalf of the Employer. The Project Manager has three alternative actions on which to base a decision, as follows:
- (a) he can offer no objections to the measures being taken or proposed because the physical conditions concerned are risks identified and transferred to the Contractor under clause Z23. The Contractor then implements such measures at his own cost in order to carry out his obligations under the contract, or
 - (b) he gives reasons for not accepting the measures. Reasons for not accepting them are set out in Z24.2, or
 - (c) he notifies his acceptance of such measures and then makes a change to the Works Information. This results in a compensation event.

43. Z23 and Z25 could be used in a contract without Z24 where adverse physical conditions are not expected, thus transferring these risks entirely to the Contractor. However, it is usual practice to delete the first four listed compensation events when using Z23 and Z24 by including them in Z25.

Z25 Compensation events

44. Z25 is used to delete compensation events. Discretion should be used when deleting compensation events so as to suit requirements of individual projects. There is no intention that all seven listed events should be deleted from a particular contract. For example, the first four listed events are relevant to Z23 and Z24 whereas the last three listed (namely clauses 60.4, 60.5 and 60.6) are only relevant to Z35. Clause 60.1 (13) should also be deleted if Z22 is used.

45. The seven listed compensation events are as follows:

- 60.1 (12) physical conditions
- 60.1 (13) weather
- 60.1 (15) early take over of *works*
[note: leave this clause intact if sectional completion applies]
- 60.3 inconsistent Site Information

[note: delete the following clauses when using Z35]

- 60.4
- 60.5
- 60.6

Z26 Work suspension (M)

46. Z26 introduces a new compensation event in order to comply with the Housing Grants, Construction and Regeneration Act 1996.

Z27 Settlement of disputes (M)

Z28 Review by the tribunal (M)

47. These clauses replace ECC adjudication procedure with the Construction Industry Council's Model Adjudication Procedure issued November 1998. Z27 repeats the statutory right that either party may give notice to the other party at any time of his intention to refer a dispute to adjudication, and that the notifying party refers the dispute to the Adjudicator within seven days of the notice. The Adjudicator's terms and conditions are set out in Contract Data part one.

48. Z28 allows a party, dissatisfied with the adjudicator's decision, to refer the dispute for review by the "tribunal" provided the referring party has notified the other party of its intention to do so not more than four weeks after the end of the time allowed for the Adjudicator's decision. The tribunal is arbitration.

Z29 Protesters and trespassers

49. Z29 transfers the risk of protesters and trespassers to the Contractor. This risk transfer takes place as from the possession date. Normally, the site will be handed over free of protesters and trespassers. Thereafter, the Contractor takes on full responsibility and bears all costs in respect of protesters and trespassers. He is also responsible for taking lawful measures at his own expense to remove them from the site, prevent them from entering onto the site and to prevent them from causing any material interference with the site.

Z30 Special Requirements of Statutory Bodies

50. This clause transfers risks relating to special requirements of Statutory Bodies to the Contractor. He is obliged to comply with such requirements at his own cost and to acknowledge that the Employer has not warranted the accuracy or completeness of any information provided to him relating to the location, size, nature or condition of services within the Site. The Contractor is also obliged to acknowledge that he neither has nor will have any claim of any kind against the Employer based on the accuracy or completeness of any such information.

Z31 Construction Industry Scheme (M)

51. Z31 confirms that the contract falls within the scope of the Inland Revenue's Construction Industry Scheme. It reminds the Contractor of his statutory obligation to hold certain certificates under this scheme. Without such certificates, an invoice or payment application must separately identify the cost of labour. The Employer will then deduct payment in accordance with the requirements of the Construction Industry Scheme (CIS).
52. CIS does not apply to PTSI (Post Tensioned Special Inspections (of Structures) schemes and should be annotated "not used" in such contracts.

Z32 Third party rights (M)

53. Z32 has been created as a consequence of the Contracts (Rights of Third Parties) Act 1999. This Act enables a person who is not a party to the contract to enforce a term of that contract in his own right - and claim for damages, etc in the case of breach.
54. In order to exclude the Act entirely from contracts it is important to check individual contracts to ensure that they do not confer any rights on third parties, either implied or stated. For example, if the contract, in particular the Works Information, states that the Contractor must liaise with local highway authorities, police, landowners, occupiers, etc over its proposals in respect of certain aspects of the works, it is possible that these entities will acquire direct rights against the Contractor for breach of this obligation even though the contract does not give them such rights. This is because a third party may acquire a right of enforcement even though there is no express provision, provided that the contract "purports to confer a benefit on him". Unless the contract expressly states that the third party is not intended to acquire rights of enforcement, those rights could now be implied into the contract.
55. However, certain parts of Act may be excluded from contracts. These parts are the "purports to confer a benefit on him" and the restriction on varying or cancelling the contract without the third party's consent. Z32 will exclude these particular parts of the Act.
56. It is important to note that where *express* rights are granted to a third party elsewhere in the contract, in particular the Works Information, those rights will override this exclusion clause.

Z33 Value Engineering

57. Z33 is used to encourage the Contractor to re-examine and refine the project's design. It encourages the contractor to predict old style "variation orders" in advance to reduce subsequent costs and delays and allows him to use different (even innovative) construction methods and techniques not previously considered to greater advantage. Z33 is not meant to be an invitation to re-design the whole works, nor to encourage a contractor simply to propose deletion of certain aspects of the works in order to claim a saving. The original scope and extent of the design should remain essentially unchanged. It does, however, enable the Contractor to bring a fresh (or different) approach to the project which is likely to result in better quality or durable works and cost savings but nonetheless meet project requirements.

58. Cost savings resulting from value engineering are likely to be mainly site-based initiatives that only become apparent once work has commenced. Any consequential effects of implementing value engineering proposals, including time or cost overruns, are borne by the Contractor. If whole-life costing was a criterion in the original design, that criterion still remains valid and should be taken into account when evaluating proposals under Z33. For proposals to be considered, they must enhance the quality or durability of the works or improve the efficiency of carrying out the works or reduce the cost to the Employer of maintaining the works.
59. When a contractor produces an idea that is accepted that idea needs to be verified and checked for implications, knock-on effects and procedural changes against the overall design, and then translated into new drawings and eventually as-built records. That represents a time and cost overhead that needs to be taken into account during the evaluation process.
60. Z33 is effectively a formal extension of the “partnering” concept whereby all parties work together in a spirit of cooperation and become individual “stakeholders” in the project. Stakeholders may include the Employer, the Contractor, subcontractors and design agents. Being a stakeholder is an important philosophy and one of the main ways of overcoming old cultures and barriers. To make the concept work each stakeholder must commit effort to the exercise and thereby benefit from any success by sharing in the benefits. When Z33 is used include paragraph 5.20 in Contract Data part one.

Z34 Design check certificate

61. Z34 should be used where the Contractor is responsible for designing parts of the works, including temporary works such as designs for traffic management. In support of his design the Contractor is required to provide a design check certificate signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. This certificate will give us the reassurance that the design has been properly considered, and is valid and reliable to meet public safety considerations. It will also provide an audit trail for contract purposes.

Z35 Considerate Constructor’s Scheme

62. By making the Considerate Constructor’s Scheme a condition of contract, tenderers are automatically obliged to allow for all costs of operating the scheme in the tendered price, including registering the site, paying the appropriate fee and allowance for day-to-day operations in complying with the Scheme’s Code of Considerate Practice. The cost of this scheme is therefore deemed to be included in the tender and no additional costs will be met by the Employer. For details apply to the Considerate Constructor’s Scheme, PO Box 75, Great Amwell, Ware SG12 9JY. Tel/fax: 01920 872837.

Z36 Risk transfer in bill of quantities

63. Z36 is used to transfer risks in the bill of quantities to the Contractor. The intention behind the clause is to give the Employer a firm lump sum price when a bill of quantities is used. By freezing the quantities, re-measurement is effectively ruled out and staffing on site is reduced bringing cost savings to both parties. However, by providing a detailed bill tenderers will be in a better position to size and price the job. Tenderers can then use their business acumen when applying rates to compensate for the fixed nature of the bill.
64. Although the Highways Agency has a preference for using an activity schedule as a means of pricing a contract, in certain circumstances it might be more practicable and desirable to produce a bill of quantities. Before applying Z36, the project sponsor needs to be satisfied that the bill fully represents a true reflection of the project, even to the extent of erring on the generous side when fixing quantities. There is no intention of catching out a contractor by deflating quantities. The motivation behind the clause is to stop claims and to achieve certainty of price outcome.

65. The best candidates for Z36 are projects that can be fairly accurately “measured” in advance, where quantities are likely to be predictable and stable. These projects are all expected to be “above” ground level such as resurfacing, replacement of fencing, new traffic management schemes, road improvement works, etc. A poor candidate for Z36 will be works “below” ground level such as repairs to bridges and viaducts where the extent of repairs are not accurately known until the top concrete layer has been broken away. In such projects, it would be unfair to transfer the risks of the bill to the contractor. When using Z36, also use Z25 to delete clauses 60.4 to 60.6 from the contract.

Z37 Railway possessions

66. Z37 incentivises the contractor to minimise the number of railway possessions required to complete the works. The clause operates in a similar way to lane rental contracts. Tenderers are given an estimated number of railway possessions required to complete the works at tender stage but are then invited to specify the actual number of possessions required by them in Contract Data part two. Normally, tenderers are required to specify two separate possession figures, firstly in order to complete construction and, secondly, in order to undertake inspections during the maintenance period. Tenderers are evaluated under item one of Annex A attached to the Instructions for Tendering. [*Tender compiler: amend either Annex D or E of the Instructions for Tendering to accommodate railway possessions.*]

Z38 Aggregates Levy

67. Section 16 of the Finance Act 2001 introduced an Aggregates Levy of £1.60 per tonne in respect of aggregates used for commercial exploitation such as for construction purposes. The aggregates covered are rock, gravel and sand. The commencement date for payment of the levy is expected to be 1 April 2002. Quarry owners will be responsible for registering their sites and for paying the levy which is administered by Customs and Excise. Tenderers now have the opportunity of contacting their usual suppliers of aggregates and manufacturers of products containing these materials to ascertain the full effects of the levy on future pricing and then take account of increased costs in their tendered price. The Aggregates Levy will not be considered a compensation event.

ANNEX C: REPORTING FORMS

HIGHWAY AGENCY REPORTING FORMS

<u>Form</u>	<u>Description</u>
500	Schedule of Certificates
501	Payment Certificate
503Pt1	Financial Statement
503Pt2	Financial Statement
505Pt1	Compensation Events Information
505Pt2	Compensation Events Information
505Pt3	Compensation Events Information
507	Statement of Disputed Compensation Events
510	Instruction Changing the Works Information
511	Summary of Changes to Works Information
512	Summary of Changes from Tender
Monthly Expenditure Forecast	
Submission of Reporting Forms	
Highways Agency Works Site Accident Report (HAWSAR)	

Highways Agency
PAYMENT CERTIFICATE
(ECC Conditions of Contract Option A/B/C)*

ECC (A/B/C) 501
Certificate No:

Report N^o:
Assessment Date:

Contract: _____

Contractor:

Project Manager under the Contract:

Payment Address:

Employer:

Final Date for Payment:

		(£)
1.	PRICE OF WORK DONE TO DATE Plus other amounts to be paid [Clause 50.2]	
2.	ADD/DEDUCT* Price adjustment for inflation [Secondary Option N]	
3.	Amount after application of adjustment for inflation	
4.	DEDUCT Retention Money now to be held [Secondary Option P]	
5.	Net amount due (3-4).....	
6.	DEDUCT total amount previously certificated for payment including releases of retention money, if any	
7.	AMOUNT DUE BEFORE VAT & ADJUSTMENTS (5-6)	
8.	VALUE ADDED TAX	
	at Standard Rate (17.5%) = Total VAT Payable	
	at Zero Rate =	
9.	ADD/DEDUCT* Delay Damages [Secondary Option R]	
10.	TOTAL AMOUNT DUE	

WE CERTIFY that the sum of _____ is now due to the Contractor in accordance with the terms of the Contract.

Signed Date
Project Manager under the Contract

EMPLOYER'S USE ONLY (NOT PART OF PAYMENT CERTIFICATE)

Amount of Certificate (10)

Other Adjustments *(ADD/DEDUCT)

TOTAL PAYMENT

Signed Date
HA Project Manager

* Delete as necessary

Report N°:
Assessment Date:

Contract: _____

NaRIS N°: _____

Bill Heads	Tender Details		Changes to Works Information Cl. 60.1(1) (505 Part 1 Col. 5)	Changes Due to Compensation Events Cl. 60.1 (2)-(18) & 60.5 (505 Part 2 Col. 5)	Changes Due to Quantity Changes Cl. 60.4 & 60.6 (505 Part 3 Col. 5)	Final Cost Excluding Disputes (Cols. 3+4+5+6)	Price of Work Done		
	% of Tender Total	Section Total					During Assessment Period	To Date	% (Cols 9/7)
1	2	3	4	5	6	7	8	9	10
TOTALS									

Highways Agency
FINANCIAL STATEMENT

ECC (A/B/C) 503 Part 2

Report N°:
Assessment Date:

Contract: _____

NaRIS N°: _____

Project Manager under the Contract:

Contractor:

Tender Price £ _____

Date of Receipt of Tender:		Contract Period (Weeks)	Contractual Completion Date	Estimated/Actual Date of Completion
Starting Date:	Original			
Defects Date:	Current			

1. Estimated Final Costs [Col 7 ECC (A/B/C) 503 Part 1]
2. Price Adjustment For Inflation to date [Line 2 ECC (A/B/C) 501]
3. Price Adjustment For Future Inflation
4. Estimated amount to be paid on disputed Compensation Events in current year [Col 8 ECC (A/B/C) 507]
5. Estimated amount to be paid in disputed Compensation Events in future year [Col 9 ECC (A/B/C) 507]
6. Estimated Final Cost [Total lines 1 to 5]
7. Early Warnings [from ECC (A/B/C) 507]
8. Total [Lines 6 + 7]

Signed
Project Manager under the Contract

Date

FOR COMPLETION BY HIGHWAYS AGENCY

9. Estimated Final Cost of British Rail, Local Authority, Statutory Undertakers and other ancillary work etc
10. Total contributions
11. TOTAL [Lines 8 to 10]

Highways Agency

COMPENSATION EVENTS INFORMATION

[For Disputed Compensation Events - See ECC (A/B/C) 507]

ECC (A/B/C) 505 Part 1

Report N°:

Assessment Date:

NaRIS N°: _____

PART 1: Changing The Works Information [Clause 60.1]					
Bill Heads	Value as previously notified	Net amount of increased value now notified	Net amount of decreased value now notified	Total value as now notified	Instruction Changing The Works Information (CWI N°)
1	2	3	4	5	6
TOTALS					

Highways Agency

COMPENSATION EVENTS INFORMATION

[For Disputed Compensation Events - See ECC (A/B/C) 507]

ECC (A/B/C) 505 Part 2

Report N°:

Assessment Date:

NaRIS N°: _____

PART 2: Changes due to Compensation Events [Clause 60.1 (2) to (18) inclusive & Clause 60.5]					
Bill Heads	Value as previously notified	Net amount of increased value now notified	Net amount of decreased value now notified	Total value as now notified	PM's Ref. No. Clause Reference of Compensation Event
1	2	3	4	5	6
TOTALS					

Highways Agency

COMPENSATION EVENTS INFORMATION

[For Disputed Compensation Events - See ECC (A/B/C) 507]

ECC (A/B/C) 505 Part 3

Report N°:

Assessment Date:

NaRIS N°: _____

PART 3: Changes due to Quantity Changes: Compensation Events [Clause 60.4 & Clause 60.6]

Bill Heads	Value as previously notified	Net amount of increased value now notified	Net amount of decreased value now notified	Total value as now notified	Clause Reference of Compensation Event
1	2	3	4	5	6
TOTALS					

Highways Agency

**STATEMENT OF DISPUTED COMPENSATION EVENTS
INCLUDING CLAUSE 16 EARLY WARNINGS**

Contract: _____

ECC (A/B/C) 507

Report N°:

Assessment Date:

NaRIS N°: _____

Event No and Date	Brief Description of all Disputed Compensation Events Formally Notified	Clause Nos.	Contractors Valuation		Project Manager under the Contract's Valuation			Project Manager under the Contracts		Remarks (including Progress)
			Initial Quotation (£)	Revised Quotation (£)	Initial Estimate (£)	Assessment (£)	Accepted Quotation (£)	Estimate of Amount Likely to be Paid in Current Financial Year (£)	Estimate of Amount Likely to be Paid in Future Financial Year (£)	
1	2	2A	3	4	5	6	7	8	9	10
Totals Carried Forward										

Highways Agency
**STATEMENT OF DISPUTED COMPENSATION EVENTS
 INCLUDING CLAUSE 16 EARLY WARNINGS**

ECC (A/B/C) 507

Report N°:

Assessment Date:

Contract: _____

NaRIS N°: _____

Event No and Date	Brief Description of all Disputed Compensation Events Formally Notified	Clause Nos.	Contractors Valuation		Project Manager under the Contract's Valuation			Project Manager under the Contract's		Remarks (including Progress)
			Initial Quotation (£)	Revised Quotation (£)	Initial Estimate (£)	Assessment (£)	Accepted Quotation (£)	Estimate of Amount Likely to be Paid in Current Financial Year (£)	Estimate of Amount Likely to be Paid in Future Financial Year (£)	
1	2	2A	3	4	5	6	7	8	9	10
Totals Brought Forward										
TOTALS										

EARLY WARNING (CLAUSE 16):	Project Manager under the Contract's Estimate	Project Manager under the Contract's Comments
11	12	13
TOTAL		

Highways Agency
INSTRUCTION CHANGING THE WORKS INFORMATION

ECC (A/B/C) 510

CWINO.

Contract: _____

Contractor:
Address:

Employer: Highways Agency

Project Manager under the Contract:

You are hereby instructed to carry out the following in accordance with Clause 29 of the Conditions of Contract:

Assessment to be based on:

- * Bill of Quantities Rates
- * Schedule of Cost Components
- * Shorter Schedule of Cost Components

* Delete as appropriate

Signed

Project Manager under the Contract

Date

Highways Agency
INSTRUCTION CHANGING THE WORKS INFORMATION
(COPY FOR EMPLOYER)

ECC (A/B/C) 510

CWINO.

Contract: _____

Contractor: _____ Employer: Highways Agency
Address: _____

Project Manager under the Contract:

You are hereby instructed to carry out the following in accordance with Clause 29 of the Conditions of Contract:

Assessment to be based on:

- * Bill of Quantities Rates
- * Schedule of Cost Components
- * Shorter Schedule of Cost Components

* Delete as appropriate

Reason for Change:

<p>Gross Addition _____</p> <p>Gross Omission _____</p> <p>Net Additional/Omission _____</p> <p>Consequential Cost _____</p> <p>Authority for issue: _____</p> <p>Approval No: _____</p> <p>Comments: _____</p>	<p style="text-align: right;">Change Code # <input style="width: 100px; height: 20px;" type="text"/></p> <p>Signed _____</p> <p>Date _____</p>
---	--

- # Insert categories as appropriate
- A = Ground Conditions
 - B = Project Manager under the Contract Changes, Errors and Omissions
 - C = Highways Agency Specification Changes
 - D = Other Highways Agency Changes
 - E = Statutory Undertakers Works
 - F = Accommodation Works
 - G = General Preliminary and Other Miscellaneous Changes

Highways Agency
SUMMARY OF CHANGES TO WORKS INFORMATION

ECC (A/B/C) 511

Report N°:
Assessment Date:

Contract: _____

NaRIS N°: _____

Estimates abstracted from Forms ECC (A/B/C) 510		Value	
Issued or revalued in CWI's Assessment Period		Gross Additions	Gross Omissions
CWI No.	Code	£	£
Total this Assessment Period		(A)	(B)
TOTAL VALUE THIS ASSESSMENT PERIOD (A-B)			£

Highways Agency
SUMMARY OF CHANGES FROM TENDER

ECC (A/B/C) 512

Report N°:

Assessment Date:

Contract: _____

NaRIS N°: _____

Category (see below)	A	B	C	D	E	F	G	Totals
Cumulative Values to Report Date	£	£	£	£	£	£	£	£
Changing the Works Information [Clause 60.1]								
Changes due to Compensation Events [Clause 60.1 (2) to (18) inclusive & Clause 60.5]								
Changes due to Quantity Changes: Compensation Events [Clause 60.4 & 60.6]								
TOTAL VALUES								

Tender Sum	
Estimated Final Cost [ECC (A/B/C) 503 Part 2 Line 8]	

Category:

- A Ground Conditions
- B Project Manager under the Contract Changes, Errors and Omissions
- C Highways Agency Specification Changes
- D Other Highways Agency Changes
- E Statutory Undertakers Works
- F Accommodation Works
- G General Preliminary and Other Miscellaneous Changes

Highways Agency
MONTHLY EXPENDITURE FORECAST

ECC (B) FORECAST

Report N°:

Assessment Date:

NaRIS N°: _____

Contract: _____

	Actual/Antipated Expenditure during Month (including Retention)												Total for Financial Year
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	
Year 2001/2002													
Year 2002/2003													
Year 2003/2004													
Year 2004/2005													
Year 2005/2006													

TOTAL

- 1. Estimated Final Cost
[From ECC (A/B/C) 503 Part 2 Line 6]
- 2. Early Warnings
[From ECC (A/B/C) 503 Part 2 Line 7]
- 3. Estimated Final Expenditure
(Total Items 1 + 2 above)

Signed _____
 Project Manager under the Contract

Date _____

Notes:

- 1. All entered costs are exclusive of VAT.
- 2. Anticipated payment date assumed as one month after invoice date

Highways Agency
SUBMISSION OF REPORTING FORMS

ECC (A/B/C) SUM

CONTRACT: _____

Report N°:

Reporting Form Ref.	N° of copies enclosed	N° of copies received
ECC (A/B/C) 500		
ECC (A/B/C) 501		
ECC (A/B/C) 503 Part 1		
ECC (A/B/C) 503 Part 2		
ECC (A/B/C) 505 Part 1		
ECC (A/B/C) 505 Part 2		
ECC (A/B/C) 505 Part 3		
ECC (A/B/C) 507		
ECC (A/B/C) 510		
ECC (A/B/C) 511		
ECC (A/B/C) 512		



WORKS SITE ACCIDENT REPORT FORM

Please use block capitals

Appendix A - HAWSAR form

HA Ref	
Agent	
HA use only	

Section 1 - DETAILS OF INJURIES			
	Fatality	Major injury or condition	Over 3-day injury
a) Severity <i>Tick box</i>			
b) Number of injuries in each category of severity <i>Specify</i>			
c) Nature of injuries in each category <i>Specify for non-fatal accidents only</i>			

Section 2 - WHERE AND WHEN			
Date	<input type="text"/>	Time	<input type="text"/>
	<i>dd mm yyyy</i>		<i>24 Hour clock</i>
Road	<input type="text"/>		<input type="text"/>
			<i>Class and Number eg M25, A1 etc</i>
Location <i>Enter exact location eg M11 Southbound, 300m north of Junction 8, nearest marker post</i>			
Location category <i>Tick box</i>			
Live carriageway (ie open to traffic)	<input type="checkbox"/>	Works area/safety zone (next to live carriageway)	<input type="checkbox"/>
		Off carriageway (eg green field site)	<input type="checkbox"/>

Section 3 - SITE CONDITIONS <i>Tick boxes</i>				
Daylight/Darkness	Motorway/Other	M / O	Road Conditions	Visibility
Light <input type="checkbox"/>	Single <input type="checkbox"/>	<input type="checkbox"/>	Dry <input type="checkbox"/>	Good <input type="checkbox"/>
Dark - Lit <input type="checkbox"/>	Dual 2 <input type="checkbox"/>	<input type="checkbox"/>	Wet <input type="checkbox"/>	Fair <input type="checkbox"/>
Dark - Unit <input type="checkbox"/>	Dual 3 <input type="checkbox"/>	<input type="checkbox"/>	Muddy <input type="checkbox"/>	Poor <input type="checkbox"/>
	Dual 4 + <input type="checkbox"/>	<input type="checkbox"/>	Snow/Ice <input type="checkbox"/>	Fog/Mist <input type="checkbox"/>
			Strong Winds <input type="checkbox"/>	Low Sun <input type="checkbox"/>
Traffic Management				Speed Limit <i>Specify</i>
Narrow Lanes <input type="checkbox"/>	Full Contraflow <input type="checkbox"/>		Traffic Signals <input type="checkbox"/>	Permanent <input type="checkbox"/>
Lane Closures <input type="checkbox"/>	Partial Contraflow <input type="checkbox"/>		Manual Stop/Go <input type="checkbox"/>	Temporary (if applicable) <input type="checkbox"/>
Hard Shoulder Closed <input type="checkbox"/>	Tidal Contraflow <input type="checkbox"/>		Convoy Working <input type="checkbox"/>	
Single Vehicle Working <input type="checkbox"/>	Mobile Lane Closure <input type="checkbox"/>		None <input type="checkbox"/>	

Section 4 - WORKS			
Contract Title:			
Works Description:			
Type of Works <i>Tick box</i>		Works Undertaken by <i>Tick box</i>	
Major Maintenance (>£1m) <input type="checkbox"/>	New Construction <input type="checkbox"/>	Main Contractor <input type="checkbox"/>	Local Authority <input type="checkbox"/>
Non-major Maintenance <input type="checkbox"/>	On-line Widening <input type="checkbox"/>	Term Maintenance Contractor <input type="checkbox"/>	Consultant <input type="checkbox"/>
Routine Maintenance <input type="checkbox"/>	Improvement Scheme <input type="checkbox"/>	Sub-Contractor <input type="checkbox"/>	Other <input type="checkbox"/>
Highways Inspections <input type="checkbox"/>	Other <input type="checkbox"/>		

Section 5 - WHAT HAPPENED?
<i>Full description of what happened, material plant or tools being used, activities/works being carried out at the time. Any other key factors which contributed to the accident should be noted.</i>
Was a member of the public injured? Tick box if so <input type="checkbox"/>

Section 6 - TYPE OF ACCIDENT <i>Tick a minimum of 5 accident types only</i>	
Involvement with vehicle driven by a member of the public	
1. Vehicle driven by a member of the public struck worker in live carriageway	1
2. Vehicle driven by a member of the public struck worker in work zone	2
3. Vehicle driven by a member of the public struck worker setting up traffic management	3
4. Vehicle driven by a member of the public struck construction vehicle/equipment in work zone	4
5. Vehicle driven by a member of the public struck by construction vehicle in live carriageway	5
Workers and construction vehicles	
6. Worker hit by construction vehicle - reversing	6
7. Worker hit by construction vehicle - all other directions	7
8. Loss of control of construction vehicle - manually operated	8
9. Loss of control of construction vehicle - not manually operated	9
Falls, trips and trench collapses	
10. Unauthorised member of public injured while in work zone	10
11. Worker fell into trench/hole	11
12. Trench collapsed on worker	12
13. Member of the public fell into trench/hole	13
14. Worker or member of the public tripped over object or equipment	14
15. Worker fell from construction vehicle or structure	15
16. Worker hit by falling object or construction equipment	16
Workers injured using machine/tool or handling equipment	
17. Worker injured while using mechanical equipment or hand tool	17
18. Worker injured by chemicals, gas or materials	18
19. Worker injured lifting or handling materials	19
Workers injured by electrical cable, gas main or water main	
20. Worker injured coming into contact with underground electrical cable	20
21. Worker injured coming into contact with overhead electrical cable	21
22. Worker injured coming into contact with gas main	22
23. Worker injured coming into contact with water main	23
Any other accident type	
24. <i>Specify</i>	24

COMPLETED BY	POSITION	DATE
ORGANISATION		TEL NO
Return completed form to Highways Agency, Quality Services Division, TSE Safety Team, St Christopher House, Southwark Street, London SE1 0TE		
NB: THIS FORM IS NOT A SUBSTITUTE FOR THE RIDDOR (F2508) FORM		

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 Transport, Local Government 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 [11 am] 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

The works are *[insert Scheme's title]*

TENDER

To: The Highways Agency on behalf of the Secretary of State for Transport, Local Government and the Regions
[enter local address]

Having examined

- (1) the Conditions of Contract, being the Engineering and Construction Contract (second edition November 1995) incorporating Option [*A] [*B] [*C], etc together with secondary options [*H, L, M, N, P, R,] T, [*X12] and Z (“the Conditions”) [*] *delete as appropriate*
- (2) Contract Data
- (3) Works Information and
- (4) Site Information.

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, the Works Information and the Site Information for a Price of £.....

We undertake to start and complete the works on the dates stated in the Contract Data.

The following completed documents forming part of our offer are also returned with this tender:-

- (1) Contract Data part two
- (2) Priced [*Activity Schedule] [*Bill of Quantities]
- (3) *Quality Statement

* *insert as applicable*

[*If our tender is accepted we will, when required, provide a parent company guarantee in the form prescribed by Annex G to the Contract Data part one unless such a guarantee has previously been lodged with the Employer.]

* *insert as applicable*

[*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 required 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 works” means the work in relation to which this tender is made.

You may accept this offer on or before *[insert date of last day for acceptance – allow 60 days]*

Dated this.....day of20.....

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

Name
(in capitals)

Duly authorised to sign tenders for and on behalf of:

.....

Registered Address Tel no
..... Fax no
..... E-mail

4. INSTRUCTIONS FOR TENDERING

[Scheme title]

**INSTRUCTIONS FOR TENDERING
AND GUIDANCE NOTES
FOR AN ECC OPTION [*A] [*B] [*C]
[*PRICED] [*TARGET COST] CONTRACT WITH
[*ACTIVITY SCHEDULE]
[*BILL OF QUANTITIES]**

**[] delete not required*

Contents

Part I: Instructions for Tendering

[optional item] Preamble
ECC features
General requirements
Tender evaluation and submission
Alternative designs
Partnering arrangements

Part II: Guidance Notes to Tenderers

Project Manager and Supervisor roles
List of documents with Invitation to Tender
List of documents to be returned with Tender

ANNEXES

[optional item] Annex A: Tender Assessment Sheet (Financial)
[optional item] Annex B: Lowest Price Tender Assessment
[optional item] Annex C: Quality/Price Tender Assessment
[optional item] Annex D: Lane rental charge (price /time assessment)
[optional item] Annex E: Lane rental charge (quality/price /time assessment)
[optional item] Annex F: Target Cost Contract
[optional item] Annex G: Questionnaire on health and safety
[Options A or C] Annex H: Illustrative Activity Schedule
[optional item] Annex I: Lane Rental Assessment (example only)

[Note: if an item is not required delete title and type "Not Used".]

Part I: Instructions for Tendering

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 Transport, Local Government and Regions but all administrative functions will be performed by the Highways Agency. For enquiries contact the Project Sponsor *[name, address, tel no and e-mail address]*.
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. Our letter accepting your tender offer will constitute a binding contract between us [*until an Agreement by Deed is prepared and executed under seal]. [*] *delete if a Deed is not 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:
 - a. **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). The Employer intends to adopt the “full” Schedule of Cost Components for this contract. If any tenderer disagrees, please make written comments within 14 days of the tender submission date; [*] *delete as appropriate*
 - b. **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*
 - c. **Management functions:** the Highways Agency has retained [*name, address, tel no and e-mail address] who will take on full responsibility for performing the management functions and duties of Project Manager and Supervisor as defined by ECC. See Contract Data Part One for names and addresses of personnel involved.
 - d. **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 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;
 - e. **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 in Contract Data Part One at Annex E. Tenderers should indicate with their tender whether any of the proposed adjudicators are acceptable and whether the proposed terms of appointment (at Annex F in Contract Data Part One) are also acceptable. If proposed adjudicators are not acceptable tenderers should propose three names (including addresses and telephone numbers) in Contract Data Part Two.

- f. **Adjudicator:** in the event of a dispute at any time, an appointment of an adjudicator will be made jointly by the Employer and the Contractor from the agreed list. If tenderers disagree with this proposal 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.
- g. **Site Information:** tenderers are provided with site survey information as listed under paragraph 51 below. 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 is 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;
- h. **Additional clauses:** tenderers' attention is drawn to additional "Z" clauses which the Highways Agency has added to ECC. These are set out in Contract Data Part One;
- i. **[*Lump sums] [*Unit rates]:** these must be quoted in pounds and pence, as appropriate, to two decimal places. All schedules submitted with tenders giving [*lump sums] [*unit rates] must be written in ink and be the original copy. If such schedules contain pencil entries or are photocopies of documents the tender will be rejected. The terms 'nil', 'n/a' or '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 sub-paragraph below]

- j. **Risks:** the Contractor will take on risks associated with [*adverse physical conditions], [*Statutory Bodies' works] and [*adverse weather conditions] (clauses 60.1 (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; * [] include/delete as appropriate

[if options A or C are used include following two sub-paragraphs]

- k. **Activity schedule:** tenderers are to submit an activity schedule with their tenders showing proposed activities with lump sum payments. This document will form part of Contract Data Part Two and 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 after construction. An illustrative activity schedule is at Annex H; and
- l. **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"]*

Sample list of activities – amend to suit

- Drainage
- Milling
- Roadbase
- Wearing course
- Work to Structures
- Safety Fencing
- Provision of as-constructed information
- Provision of Health and Safety File.

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. **Special Requirements:** tenderers should note the special requirements of statutory undertakers as set out in Annex A 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.
7. **Pollution:** tenderers should note any special arrangements in the Specification for Highways Works 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 licence or authorisation is required from the Environment Agency responsibility for obtaining it falls to the Contractor.
8. **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.
9. **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.
10. **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.
11. **Insurance queries:** should be raised in writing with the Employer at the earliest opportunity but in any event not later than [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.
12. **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.
13. **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.

14. **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 G. [*Compiler: check with Procurement Officer before inserting complete Part I only if Parts II and III have already been provided within the past 12 months - give reference details.*]

15. **Health and safety plan:** an outline plan is given in Contract Data Part One at Annex D. If tenderers wish to make any revisions to the plan they must obtain the Planning Supervisor's agreement in writing to do so, directed through the Employer, prior to the return of the tender.

For Options A and B only (delete for Option C)

16. **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 [*Either: for contracts above £1m*]: 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. [*Or: for contracts below £1m or hybrid schemes involving partial lane rental*]: based on the following formula which reflects both loss of capital invested and extra administrative costs incurred as a result of the delay in completion of the contract: final award price x 12.5% ÷ 365 days + daily supervision cost = £..... per day. The amount for supervision costs for this contract is expected to be £(...) 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.

Optional paragraph:

17. **Structural steelwork:** tenderers should note that the fabrication and erection of steelwork for Bridgeworks and Footbridges/sign gantries (or similar steel structures) must be carried out by a steelwork contractor listed in the Register of Qualified Steelwork Contractors for the type and value of the work to be undertaken or equivalent. This requirement may also be satisfied, if necessary, by registration and audit under an approved equivalent registration scheme from another member state of the European Union provided that the scheme ensures corresponding levels of safety, suitability and fitness for purpose. As part of Contract Data Part Two, tenderers must state whether or not they, or alternatively a proposed named subcontractor, are a registered steelwork contractor. Enquiries about the register should be made to the Register of Qualified Steelwork Contractors, 4 Whitehall Court, London SW1A 2ES. E-mail: gillian.mitchell@steelconstruction.org. Website: www.steelconstruction.org. Tel: 020 7839 8566. Fax 020 7976 1634.

Optional paragraph:

18. **Payment profiling:** tenderers' attention is drawn to the Payment Profile Table in Contract Data Part One and associated amendments contained in clause Z12A. Notwithstanding the other conditions of contract, payments by the Employer to the Contractor during each period of payment will be limited to the maximum payment stated. Provided that any residual sum arising from a period of payment is paid by the final date for payment in accordance with clause Z16.1 the Contractor will have no entitlement to interest in respect of that sum.

TENDER SUBMISSION AND EVALUATION

19. **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 **strictly in accordance with the tender document as issued (or as subsequently amended by the Employer) will be accepted for consideration.** The Employer's decision on whether a tender is acceptable will be final and the tenderer will not be consulted. **Qualified tenders will be excluded from the competition and the tenderer will be notified.**

20. **Tender evaluation:** tenders will be assessed on the basis of ...*. [**Delete paragraphs not required*]

[**if price only, add:*] price as adjusted by Annex A. The contract is awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of price proposals in accordance with Annex B.

*[*if quality/price tender assessment is used, add:]* both quality and price as adjusted by Annex A. The contract is awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of quality, execution and price proposals in accordance with Annex C.

*[*if lane rental (price/time only) is used, add:]* price as adjusted by Annex A for costs and time allowance. The contract is awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of time and price proposals in accordance with Annex D.

*[*if lane rental (quality/price /time) is used, add:]* both quality and price as adjusted by Annex A and after allowance for time. The contract is awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of quality, time and price proposals in accordance with Annex E.

*[*if target cost is used, add:]* both quality and target price. The contract is awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of quality, execution and price proposals in accordance with Annex F.

21. **Advance payment:** the principles governing public procurement require that payments for goods, works or services are made after delivery. Any indication of advance payments within a tender will be examined to decide whether a tender in such a form is acceptable. If the Employer considers that advance payments are included it reserves the right to require the tenderer to spread such pricing over the duration of the works.

22. **Form of Tender:** the accompanying Form of Tender must be completed in ink and 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.

23. **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

24. **Tender acceptance:** the Employer does not bind himself to accept any tender.

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

Optional paragraph – only applies to schemes advertised in OJEC

26. **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.

SUBMISSION OF ALTERNATIVE DESIGNS

27. **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.

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

	By tender week
tenderer should request meeting with Project Manager to discuss their Alternative Proposals to ensure that they meet project requirements.	[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

29. 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

30. 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.

PARTNERING ARRANGEMENT

Optional paragraph:

31. **Partnering:** tenderers should note that the Employer intends to establish a partnering arrangement for the operation of this contract, using the ECC's X12 Partnering Option. The proposed partnering 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 joint "partnering objectives" 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.

32. **ECC's X12 Partnering Option:** this partnering option is not intended to alter legal relationships between parties to the contract nor relieve a party from its obligations under the contract. Each party to the partnering option will bear its own costs. To start the process, tenderers are encouraged to notify the Employer of any errors or areas of doubt they identify in the tender documentation.

Part II: Guidance Notes to Tenderers

33. **Project Manager and Supervisor roles:** neither of these two persons 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.

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

- a. Instructions for Tendering and Guidance Notes
- b. Form of Tender
- c. Contract Data parts one and two, together with Appendices
- d. Works Information, including:
 - Specification
 - Drawings
 - Assessment Reports
- e. Site Information, including:
 - (i) Deflectograph survey of existing carriageways
 - (ii) Topographical Survey
 - (iii) Geotechnical Survey Information
 - (iv) Environmental Statement
 - (v) Any other relevant survey information.
- f. [*Illustrative Activity Schedule] [*Bill of Quantities] * [] *delete as appropriate*
- g. Form of Agreement by Deed (*delete if not appropriate*)

ANNEX A - TENDER ASSESSMENT SHEET (FINANCIAL)

[Note: tender compilers are responsible for completing this Annex A with project specific information. It should match information requested in Contract Data Part Two. Annex A must be issued with each tender invitation for ECC options A and B, but not C or D. See page 116 of ECC brown book for guidance – the following may be amended to suit individual projects.]

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 but may be exceeded. Other factors may be taken into account in assessing tenders. These may include cashflow effects, advance payments and design by the Contractor.

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

ITEM **AMOUNT £**

[Note: item 1 applies if lane rental/bonus or railway possession clauses are used in contracts.]

**1. Completion period “x”.....
Completion period “y”.....**

Note: insert Tenderer’s completion period in days or number of railway possessions at “x”. At “y” insert the lowest number of days or lowest number of railway possessions tendered by the lowest Tenderer. Then take “y” from “x” = number of days or railway possessions greater multiplied by the relevant charge of £..... per day or per railway possession =

£.....

2. Manufacture and Fabrication

For potential compensation events allow 500 extra man hours.

Senior Engineer	10% x 500 x (hourly rate) =	£.....
Engineer	15% x 500 x (hourly rate) =	£.....
Technician	20% x 500 x (hourly rate) =	£.....
Skilled Labour	25% x 500 x (hourly rate) =	£.....
Semi Skilled Labour	30% x 500 x (hourly rate) =	£.....
	Sub-total	£.....

Manufacture and Fabrication overheads: % of above Sub-total £.....

3. Design

For potential compensation events allow 250 man hours.

Design Manager	10% x 250 x (hourly rate) =	£.....
Senior Design Engineer	15% x 250 x (hourly rate) =	£.....
Design Engineer	20% x 250 x (hourly rate) =	£.....
Senior Technician	25% x 250 x (hourly rate) =	£.....
Technician	30% x 250 x (hourly rate) =	£.....
	Sub-total	£.....

Design overheads: % of above Sub-total £.....

4. Site Employees

For potential compensation events allow 500 extra man hours.

Senior Engineer	10% x 500 x (hourly rate) =	£.....
Engineer	15% x 500 x (hourly rate) =	£.....
Foreman	20% x 500 x (hourly rate) =	£.....
Skilled Labour	25% x 500 x (hourly rate) =	£.....
Unskilled Labour	30% x 500 x (hourly rate) =	<u>£.....</u>
	Sub-total	£.....
Site Employees overheads: % of above Sub-total		£.....

5. Site Equipment

For potential compensation events allow 500 extra equipment hours.
Rates are from the Civil Engineering Contractors Association's
"Schedule of Dayworks".

Light Van	15% x 500 x ("adjustment" percentage) =	£.....
5 Tonne Truck	15% x 500 x ("adjustment" percentage) =	£.....
Compressor	20% x 500 x ("adjustment" percentage) =	£.....
Dumper	15% x 500 x ("adjustment" percentage) =	£.....
Ecavator	15% x 500 x ("adjustment" percentage) =	£.....
Lorry Mounted Crane	5% x 500 x ("adjustment" percentage) =	£.....
Passenger vehicle	15% x 500 x ("adjustment" percentage) =	<u>£.....</u>
	Sub-total	£.....
Site Equipment depreciation and maintenance: % of above Sub-total		£.....

6. Working Areas Overheads

... % of £ £.....

7. Fee

... % of £ £.....

Total for potential compensation events (1,2,3,4,5 and 6)	=	£.....
Plus Tenderer's Fee percentage on compensation events	=	£.....
Tendered total from Form of Tender	=	£.....

TOTAL FOR TENDER ASSESSMENT PURPOSES ONLY	=	<u>£.....</u>

ANNEX B - LOWEST ACCEPTABLE, ADJUSTED TENDER - PRICE ONLY

1. Tenders will be assessed on the basis of price as adjusted by Annex A. The contract will be awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of price. A sample assessment is shown below.

SAMPLE ASSESSMENT

Tenders received in order of price

Tender Price	Adjustment for Annex A*
A £1,410,000	£211,500
B £1,455,000	£218,250
C £1,460,000	£219,000
D £1,490,000	£223,500
E £1,525,000	£228,750
F £1,550,000	£232,500

* 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
A	£1,410,000 + £211,500	= £1,621,500 1st
B	£1,455,000 + £218,250	= £1,673,250 2nd
C	£1,460,000 + £219,000	= £1,679,000 3rd
D	£1,490,000 + £223,500	= £1,713,500 4th
E	£1,525,000 + £228,750	= £1,753,750 5th
F	£1,550,000 + £232,500	= £1,782,500 6th

2. **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.
- (iv) Details of the tenderer's insurance policies, including a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.
- (v) A completed Health and Safety questionnaire.
- (vi) 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.

- (c) Report on the Environmental Impact of the alternative design, including mitigation measures.
 - (d) A statement on how the outline Health and Safety Plan would change resulting from the alternative design.
 - (e) The following completed documents (forms obtainable from the Employer):
 - Approval in Principle forms for each alternative structure
 - Addendum Approval in Principle Forms
 - Stage 1 Safety Audit Certificate
 - (f) An [*alternative priced Activity Schedule] [*fully priced extension to Bill of Quantities]
** [] delete as appropriate*
 - (g) A statement setting out the cost savings.
- (vii) Completed Annex A: Tender Assessment Sheet (Financial)
- (viii) All other information required to be submitted at the tender stage.

ANNEX C - QUALITY/PRICE TENDER ASSESSMENT

1. Tenderers are required to submit the tender in two parts: a Quality Statement which must be contained in an envelope marked "Envelope A Quality" (3 copies required) and a Financial Submission contained in an envelope marked "Envelope B Financial" (1 **original** required).
2. Both "A" and "B" envelopes should be marked with the tenderer's name. These two envelopes should then be sealed in an outer, plain, envelope without marking of any kind identifying the tenderer as instructed in the tender invitation letter.

Quality Statement

3. "Envelope A Quality" must include comprehensive information on the items below which will be assessed and scored in Tender Assessment Sheet (Quality) at Table 2. Please note that information contained in the Quality Statement will become actionable terms and be bound into the contract under Contract Data Part Two. "Envelope A Quality" must **not** contain pricing information relating directly to the tendered price.

[Note to tender compilers: the following details can be amended to suit project-specific circumstances]

4. Please provide the following information:

Project specific information

- (i) a description of the approach to this contract and the methodology to be employed, including proposals for mitigating identified risks. This should include type and availability of resources to be utilised and any innovative ideas of significance to the timely and cost effective completion of the works (no longer than 4 A4 pages);
- (ii) details of the tenderer's previous experience of similar works with at least two references of work examples (no longer than 2 A4 pages);
- (iii) outline programme including level of resources for each activity in accordance with Numbered Appendix 1/13 in Works Information. It is required to enable the 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 (no longer than 2 A4 pages);
- (iv) the names, education qualifications, training records and practical experience of the Contract Director (or equivalent with overall responsibility for the project) and the Contract Manager who will have responsibility for day-to-day operation of the contract. Emphasis should be placed on practical experience rather than qualifications; (no longer than 2 A4 pages);
- (v) details of site management structure with names, disciplines, grades, training records and CVs of all key persons listed in Contract Data Part Two including the proposed Site Agent, Site Safety Officer, Traffic Safety and Control Officer, *[include as necessary]*. Emphasis should be placed on practical experience rather than qualifications; (no longer than 4 A4 pages);
- (vi) proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement;
- (vii) an outline quality plan in accordance with clause Z8 in Contract Data Part One and Numbered Appendix 1/24 in the Works Information (no longer than 2 A4 pages);
- (viii) list employees to be employed on this contract holding National Vocational Qualifications under the Construction Skills Certification Scheme and (if appropriate) the Fencing Industry Skills Scheme;

- (ix) list all subcontractors proposed for this contract, stating experience for type of work proposed and references for similar work completed (no longer than 2 A4 pages);
- (x) proposals for customer care, public relations and liaison procedures with the Project Manager, Supervisor, Employer, adjacent highway authorities, emergency services, statutory undertakers and transport authorities (no longer than 2 A4 pages);
- (xi) responses to Part I of the questionnaire on health and safety as set out at Annex G (no longer than 4 A4 pages);

Non-project specific information

- (xii) if structural steelwork applies, state tenderer's registration details under the Register of Qualified Steelwork Contractors (or equivalent) or, alternatively, state registration details of a proposed named subcontractor;
- (xiii) responses to Parts II and III of the questionnaire on health and safety as set out at Annex G (no longer than 4 A4 pages);
- (xiv) policy statements on quality management and health and safety, details of QA accreditation, health and safety training, other staff training, and procedures and criteria for selection and management of sub-contractors (no longer than 4 A4 pages);
- (xv) statement on commitment to partnering (no longer than 1 A4 page).

Evaluation Panels

5. 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 shown in Table 1, against the quality aspects shown in Table 2.

6. **Quality scoring:** the highest scored proposal from Table 2 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 Table 2 will have their Financial Submission returned unopened. A worked example of the Tender Assessment Sheet (Quality) is given in Tables 3 to 6. [*delete as appropriate*]

7. **Financial Panel:** an appraisal of the [*lump sums] [*unit rates] submitted will be undertaken by the Project Manager. 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*]

8. **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 acceptable adjusted tendered total will be given 100 marks and all other adjusted totals will have one mark deducted for each percentage point by which the total exceeds that of the lowest. Percentage calculations will be made to one decimal point. A tender priced 13.5% above the lowest will thus receive 86.5 marks. A worked example is given in Table 7.

9. **Final Tender Assessment:** marks for each tenderer's Quality Statement and Financial Submission will be aggregated on a price/quality ratio of [80:20]. A worked example is given in Table 8.

10. **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.

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

Envelope A Quality

- (i) All the information required under “Quality Statement”.
- (ii) A completed Health and Safety questionnaire.
- (iii) Details of the tenderer’s insurance policies, including a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.
- (iv) 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
 - (c) Report on the Environmental Impact of the alternative design, including mitigation measures
 - (d) A statement on how the outline Health and Safety Plan would change resulting from the alternative design
 - (e) The following completed documents (forms obtainable from the Employer):
 - 1. Approval in Principle forms for each alternative structure
 - 2. Addendum Approval in Principle Forms
 - 3. Stage 1 Safety Audit Certificate.

Envelope B Financial

- (i) Completed Form of Tender
- (ii) Tendered [*activity schedule] [*bill of quantities]; * [] *delete as appropriate*
- (iii) Completed Contract Data Part Two
- (iv) If an Alternative Design (either partial or whole) is being submitted include the following additional information:
 - 1. An [*alternative priced Activity Schedule] [*fully priced extension to Bill of Quantities] * [] *delete as appropriate*
 - 2. A statement setting out the cost savings.
- (v) Completed Annex A: Tender Assessment Sheet (Financial)
- (vi) All other information required to be submitted at the tender stage.

Table 1

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

Tender Assessment Sheet (Quality)

Table 2

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
THE FOLLOWING ASPECTS ARE PROJECT SPECIFIC			
Contract approach and methodology	5%		
Details of previous experience and work references	10%		
Outline programme with resource data	10%		
CVs of Contract Director/Manager	10%		
CVs of key site personnel	10%		
Proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement	20%		
Outline Quality Plan			
Proposed list of subcontractors			
Proposals for customer care, public relations and liaison management	10%		
Responses to Part I of Questionnaire on Health and Safety	10%		
THE FOLLOWING ASPECTS ARE NON-PROJECT SPECIFIC			
QA accreditation, including quality sector schemes, steelwork registration and supply chain	15%		
Responses to Parts II and III of Questionnaire on Health and Safety			
Training policy and records (incl. NVQs under CSCS and FISS)			
Procedures and criteria for the selection and management of subcontractors			
Commitment to Partnering			
	100%		

TOTAL SCORE:..... Assessor:

Date:..... (signature)

Tender Assessment Sheet (Quality)

Table 3

[WORKED EXAMPLE A]

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
THE FOLLOWING ASPECTS ARE PROJECT SPECIFIC			
Contract approach and methodology	5%	0	
Details of previous experience and work references	10%	7	70
Outline programme with resource data	10%	2	20
CVs of Contract Director/Manager	10%	8	80
CVs of key site personnel	10%	6	60
Proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement	20%	8	160
Outline Quality Plan			
Proposed list of subcontractors			
Proposals for customer care, public relations and liaison management	10%	5	50
Responses to Part I of Questionnaire on Health and Safety	10%	7	70
THE FOLLOWING ASPECTS ARE NON-PROJECT SPECIFIC			
QA accreditation, including quality sector schemes, steelwork registration and supply chain	15%	6	90
Responses to Parts II and III of Questionnaire on Health and Safety			
Training policy and records (incl. NVQs under CSCS and FISS)			
Procedures and criteria for the selection and management of subcontractors			
Commitment to Partnering			
	100%	—	600

TOTAL SCORE:..... Assessor:

Date:..... (signature)

Tender A disqualified as zero scored against “Contract approach and methodology”

Tender Assessment Sheet (Quality)

Table 4

[WORKED EXAMPLE B]

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
THE FOLLOWING ASPECTS ARE PROJECT SPECIFIC			
Contract approach and methodology	5%	6	30
Details of previous experience and work references	10%	6	60
Outline programme with resource data	10%	5	50
CVs of Contract Director/Manager	10%	6	60
CVs of key site personnel	10%	4	40
Proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement	20%	5	100
Outline Quality Plan			
Proposed list of subcontractors			
Proposals for customer care, public relations and liaison management	10%	5	50
Responses to Part I of Questionnaire on Health and Safety	10%	5	50
THE FOLLOWING ASPECTS ARE NON-PROJECT SPECIFIC			
QA accreditation, including quality sector schemes, steelwork registration and supply chain	15%	6	90
Responses to Parts II and III of Questionnaire on Health and Safety			
Training policy and records (incl. NVQs under CSCS and FISS)			
Procedures and criteria for the selection and management of subcontractors			
Commitment to Partnering			
	100%	—	530

TOTAL SCORE:..... Assessor:

Date:..... (signature)

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

Tender Assessment Sheet (Quality)

Table 5

[WORKED EXAMPLE C]

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
THE FOLLOWING ASPECTS ARE PROJECT SPECIFIC			
Contract approach and methodology	5%	8	40
Details of previous experience and work references	10%	9	90
Outline programme with resource data	10%	9	90
CVs of Contract Director/Manager	10%	9	90
CVs of key site personnel	10%	9	90
Proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement	20%	9	180
Outline Quality Plan			
Proposed list of subcontractors			
Proposals for customer care, public relations and liaison management	10%	8	80
Responses to Part I of Questionnaire on Health and Safety	10%	8	80
THE FOLLOWING ASPECTS ARE NON-PROJECT SPECIFIC			
QA accreditation, including quality sector schemes, steelwork registration and supply chain	15%	8	120
Responses to Parts II and III of Questionnaire on Health and Safety			
Training policy and records (incl. NVQs under CSCS and FISS)			
Procedures and criteria for the selection and management of subcontractors			
Commitment to Partnering			
	100%	—	860

TOTAL SCORE:..... Assessor:

Date:..... (signature)

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

Tender Assessment Sheet (Quality)

Table 6

[WORKED EXAMPLE D]

Scheme:

TENDERER: ASSESSOR:			
QUALITY ASPECT	ASPECT WEIGHTING (A)	MARKS AWARDED (B)	WEIGHTED MARKS (C) (AxB=C)
THE FOLLOWING ASPECTS ARE PROJECT SPECIFIC			
Contract approach and methodology	5%	8	45
Details of previous experience and work references	10%	7	70
Outline programme with resource data	10%	8	80
CVs of Contract Director/Manager	10%	6	60
CVs of key site personnel	10%	6	60
Proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement	20%	7	140
Outline Quality Plan			
Proposed list of subcontractors			
Proposals for customer care, public relations and liaison management	10%	8	80
Responses to Part I of Questionnaire on Health and Safety	10%	7	70
THE FOLLOWING ASPECTS ARE NON-PROJECT SPECIFIC			
QA accreditation, including quality sector schemes, steelwork registration and supply chain	15%	8	120
Responses to Parts II and III of Questionnaire on Health and Safety			
Training policy and records (incl. NVQs under CSCS and FISS)			
Procedures and criteria for the selection and management of subcontractors			
Commitment to Partnering			
	100%	—	725

TOTAL SCORE:..... Assessor:

Date:..... (signature)

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

Table 7

(WORKED EXAMPLE)

Example of a Quality/Price Tender Assessment

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 with calculations to one decimal point:

ie Tender C exceeds lowest by £155,000. Therefore % above lowest is 7.75. Marks deducted is 7.8.

Tender B: 0.00 100 - 0 = 100.0

Tender C: 7.75 100 - 7.8 = 92.2

Tender D: 14.00 100 - 14.0 = 86.0

Overall Assessment

Table 8

20% Quality: 80% Price

(WORKED EXAMPLE)

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	100.0	80.0	92.4
C	100	20.0	2,155	92.2	73.8	93.8
D	84	16.8	2,280	86.0	68.8	85.6

Tender is awarded to C

ANNEX D - LANE RENTAL CHARGE (PRICE/TIME ASSESSMENT)

1. Tenders will be assessed on the basis of price and time as adjusted by Annex A. The contract will be awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of price and time.
2. 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 by a tenderer will be used as the base period for evaluation. All other tenderers will have their tender price adjusted by multiplying the number of extra days for completion by the daily lane rental charge. This adjustment will be made to item 1 of Annex A - Tender Assessment Sheet (Financial). Annex I gives an example of a typical calculation for a lane rental contract.
3. 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*
4. 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*
5. A lane rental charge will be payable by the Contractor if he re-occupies the carriageway between Completion and the defects date for the purposes of correcting defects.
5. **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
 - iv. Details of the tenderer's insurance policies, including a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.
 - v. A completed Health and Safety questionnaire.
 - vi. 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
 - c. Report on the Environmental Impact of the alternative design, including mitigation measures.
 - d. A statement on how the outline Health and Safety Plan would change resulting from the alternative design.
 - e. The following completed documents (forms obtainable from the Employer):
 - Approval in Principle forms for each alternative structure
 - Addendum Approval in Principle Forms
 - Stage 1 Safety Audit Certificate
 - f. An [*alternative priced Activity Schedule] [*fully priced extension to Bill of Quantities] * [] *delete as appropriate*
 - g. A statement setting out the cost savings.
 - h. Completed Annex A: Tender Assessment Sheet (Financial).
 - i. All other information required to be submitted at the tender stage.

ANNEX E - LANE RENTAL CHARGE (QUALITY/PRICE/TIME ASSESSMENT)

1. Tenders will be assessed on the basis of quality, price and time as adjusted by Annex A. The contract will be awarded to the tenderer submitting the most economically advantageous offer assessed on the basis of quality, price and time.
2. Tenderers are required to submit the tender in two parts: a Quality Statement which must be contained in an envelope marked "Envelope A Quality" (3 copies required) and a Financial Submission contained in an envelope marked "Envelope B Financial" (1 **original** required). Both "A" and "B" envelopes should be marked with the tenderer's name. These two envelopes should then be sealed in an outer, plain, unmarked envelope as instructed in the tender invitation letter.
3. As part of the financial assessment, 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 by a tenderer will be used as the base period for adjustment. 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. This adjustment will be made to item 1 of Annex A - Tender Assessment Sheet (Financial). Annex I gives an example of a typical calculation for a lane rental contract.
4. 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
5. 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
6. A lane rental charge will be payable by the Contractor if he re-occupies the carriageway between Completion and the defects date for the purposes of correcting defects.

Quality Statement

7. "Envelope A Quality" must include comprehensive information on the items below which will be assessed and scored in Tender Assessment Sheet (Quality) at Table 2. Please note that information contained in the Quality Statement will become actionable terms and be bound into the contract. "Envelope A Quality" must not contain any pricing information.

[Note to tender compilers: this information may be amended to suit project-specific circumstances]

8. Please provide the following information:

Project specific information

- (a) a description of the approach to this contract and the methodology to be employed. This should include type and availability of resources to be utilised and any innovative ideas of significance to the timely and cost effective completion of the works (no longer than 2 A4 pages);
- (b) details of the tenderer's previous experience of similar works with at least two references of work examples (no longer than 2 A4 pages);
- (c) outline programme including level of resources for each activity in accordance with Numbered Appendix 1/13 in Works Information. It is required to enable the 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 (no longer than 2 A4 pages);

- (d) the names, education qualifications, training records and practical experience of the Contract Director (or equivalent with overall responsibility for the project) and the Contract Manager who will have responsibility for day-to-day operation of the contract. Emphasis should be placed on practical experience rather than qualifications; (no longer than 2 A4 pages);
- (e) details of site management structure with names, disciplines, grades, training records and CVs of all key persons listed in Contract Data Part Two including the proposed Site Agent, Site Safety Officer, Traffic Safety and Control Officer, *[include as necessary]*. Emphasis should be placed on practical experience rather than qualifications; (no longer than 4 A4 pages);
- (f) proposals for design (where appropriate), planning, managing and executing the works, indicating key personnel involvement;
- (g) an outline quality plan in accordance with clause Z8 in Contract Data Part One and Numbered Appendix 1/24 in the Works Information (no longer than 2 A4 pages);
- (h) list employees to be employed on this contract holding National Vocational Qualifications under the Construction Skills Certification Scheme and (if appropriate) the Fencing Industry Skills Scheme;
- (i) list all subcontractors proposed for this contract, stating experience for type of work proposed and references for similar work completed (no longer than 2 A4 pages);
- (j) proposals for customer care, public relations and liaison procedures with the Project Manager, Supervisor, Employer, adjacent highway authorities, emergency services, statutory undertakers and transport authorities (no longer than 2 A4 pages);
- (k) responses to Part I of the questionnaire on health and safety as set out at Annex G (no longer than 4 A4 pages);

Non-project specific information

- (l) if structural steelwork applies, state tenderer's registration details under the Register of Qualified Steelwork Contractors (or equivalent) or, alternatively, state registration details of a proposed named subcontractor;
- (m) responses to Parts II and III of the questionnaire on health and safety as set out at Annex D (no longer than 4 A4 pages);
- (n) policy statements on quality management and health and safety, details of QA accreditation, health and safety training, other staff training, and procedures and criteria for selection and management of sub-contractors (no longer than 4 A4 pages);
- (o) statement on commitment to partnering (no longer than 1 A4 page).

Evaluation Panels

9. 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 shown in Table 1, against the quality aspects shown in Table 2.

10. **Quality scoring:** the highest scored proposal from Table 2 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 Table 2 will have their Financial Submission returned unopened. A worked example of a tender evaluation is given in Tables 3 to 8 below. [** delete as appropriate*]

11. **Financial Panel:** an appraisal of the [*lump sums] [*unit rates] submitted will be undertaken by the Project Manager. 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*

12. **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.

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

Envelope A Quality

- i. All the information required under “Quality Statement”.
- ii. A completed Health and Safety questionnaire.
- iii. Details of the tenderer’s insurance policies, including a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.
- iv. 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
 - c. Report on the Environmental Impact of the alternative design, including mitigation measures
 - d. A statement on how the outline Health and Safety Plan would change resulting from the alternative design
 - e. The following completed documents (forms obtainable from the Employer):
 1. Approval in Principle forms for each alternative structure
 2. Addendum Approval in Principle Forms
 3. Stage 1 Safety Audit Certificate.

Envelope B Financial

- i. Completed Form of Tender
- ii. Tendered [*activity schedule] [*bill of quantities]; * [] *delete as appropriate*
- iii. Completed Contract Data Part Two
- iv. If an Alternative Design (either partial or whole) is being submitted include the following additional information:
 - a. An [*alternative priced Activity Schedule] [*fully priced extension to Bill of Quantities] * [] *delete as appropriate*
 - b. A statement setting out the cost savings
- vii. Completed Annex A: Tender Assessment Sheet (Financial)
- viii. All other information required to be submitted at the tender stage.

[Note: include Tables 1 to 8 here from Annex C]

ANNEX F - TARGET COST CONTRACT

[Note: a Target Cost Contract is an ideal way for early contractor involvement to help finalise the design and to investigate risk mitigation measures. This annex is given for guidance only – it should be amended to suit project-specific requirements.]

1. Tenderers are required to tender [*lump sum prices for each of the activities on the accompanying activity schedule] [*unit rates for each description on the accompanying bill of quantities] which covers all the main work activities for this scheme. These activities include time charged work for developing and refining the design and for developing and implementing risk mitigation measures. The design and risk work will be undertaken in collaboration with the Employer’s design agent. Payment assessments will be based on actual costs plus a “fee” for overheads and profit. From the priced activity schedule, tenderers are required to produce a “target price”, sub-divided into two phases as described in paragraph 2 below, to cover design, risk mitigation, construction, completion and commissioning of the whole works including allowance for a defects correction period.

2. This contract will comprise two phases, as follows:

Phase 1: the expected duration is [8] weeks during which the appointed contractor will be required to undertake a detailed survey of the site including inspections and testing of existing structures to determine the nature and extent of work and risks involved, and then in collaboration with the Employer’s design agent to refine the design and to prepare measures for mitigating such risks. At the end of phase 1, the contractor is required to submit proposals for risk mitigation, together with a revised “target price” for phase 2 covering construction. The contractor’s risk mitigation proposals are expected to reduce prices which should be reflected in his revised “target price”. It is not envisaged that investigations into risk mitigation or final design work will change the scope or extent of the scheme.

Phase 2: construction, testing, commissioning and completion of the whole works including a defects correction period.

Risk allocation

3. Following receipt of the contractor’s risk mitigation proposals, discussions will be held between the Project Manager and contractor to determine risk allocation. Risks held by the contractor will be included in the target price whereas Employer’s risks will be excluded from the target price. Given the contractor’s involvement during phase 1, it is expected that all risks for design, ground conditions and statutory bodies’ works will be held by the contractor.

Share arrangements

4. The contractor’s share percentages and the share ranges are:

Share range [Target price base figure = 100%]	Contractor’s share percentage
less than [80]% of target price:	[25]%
from [80]% to [90]%	[35]%
from [90]% to [110]%	[50]%
from [110]% to [120]%	[35]%
greater than [120]%	[25]%

5. The contractor’s “fee” for overheads and profit is based on the target price which may be adjusted at any time to reflect compensation events. The contractor will be paid his full fee entitlement based on the agreed target price irrespective of whether the eventual cost of the scheme is below or above the contract target price.

Completion Date

6. It is very important that this scheme is delivered on time and in accordance with the Accepted Programme. Therefore, any cost savings achieved will be paid to the contractor on the following basis: if the scheme is completed on time 100% of entitlement; however, this entitlement will reduce by 10% for each week (or part) after the completion date.

Tender assessment

7. Tenderers are required to submit the tender in two parts: a Quality Statement which must be contained in an envelope marked "Envelope A Quality" (3 copies required) and a Financial Submission contained in an envelope marked "Envelope B Financial" (1 **original** required).

8. Both "A" and "B" envelopes should be marked with the tenderer's name. These two envelopes should then be sealed in an outer, plain, envelope without marking of any kind identifying the tenderer as instructed in the tender invitation letter.

Quality Statement

9. "Envelope A Quality" must include comprehensive information on the items below which will be assessed and scored in Tender Assessment Sheet (Quality) at Table 2. Please note that information contained in the Quality Statement will become actionable terms and be bound into the contract under Contract Data Part Two. "Envelope A Quality" must **not** contain pricing information relating directly to the tendered price.

[Note to tender compilers: the following details can be amended to suit project-specific circumstances]

10. Please provide the following information:

Project specific information

- (a) a description of the approach to this contract and the methodology to be employed. This should include type and availability of resources to be utilised and any innovative ideas of significance to the timely and cost effective completion of the works (no longer than 2 A4 pages);
- (b) details of the tenderer's previous experience of similar works with at least two references of work examples (no longer than 2 A4 pages);
- (c) outline programme including level of resources for each activity in accordance with Numbered Appendix 1/13 in Works Information. It is required to enable the 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 (no longer than 2 A4 pages);
- (d) the names, education qualifications, training records and practical experience of the Contract Director (or equivalent with overall responsibility for the project) and the Contract Manager who will have responsibility for day-to-day operation of the contract. Emphasis should be placed on practical experience rather than qualifications; (no longer than 2 A4 pages);
- (e) details of site management structure with names, disciplines, grades, training records and CVs of all key persons listed in Contract Data Part Two including the proposed Site Agent, Site Safety Officer, Traffic Safety and Control Officer, *[include as necessary]*. Emphasis should be placed on practical experience rather than qualifications; (no longer than 4 A4 pages);
- (f) proposals for design, planning, managing and executing the works, indicating key personnel involvement;
- (g) an outline quality plan in accordance with clause Z8 in Contract Data Part One and Numbered Appendix 1/24 in the Works Information (no longer than 2 A4 pages);

- (h) list employees to be employed on this contract holding National Vocational Qualifications under the Construction Skills Certification Scheme and (if appropriate) the Fencing Industry Skills Scheme;
- (i) list all subcontractors proposed for this contract, stating experience for type of work proposed and references for similar work completed (no longer than 2 A4 pages);
- (j) proposals for customer care, public relations and liaison procedures with the Project Manager, Supervisor, Employer, adjacent highway authorities, emergency services, statutory undertakers and transport authorities (no longer than 2 A4 pages);
- (k) responses to Part I of the questionnaire on health and safety as set out at Annex G (no longer than 4 A4 pages);

Non-project specific information

- (l) if structural steelwork applies, state tenderer's registration details under the Register of Qualified Steelwork Contractors (or equivalent) or, alternatively, state registration details of a proposed named subcontractor;
- (m) responses to Parts II and III of the questionnaire on health and safety as set out at Annex G (no longer than 4 A4 pages);
- (n) policy statements on quality management and health and safety, details of QA accreditation, health and safety training, other staff training, and procedures and criteria for selection and management of sub-contractors (no longer than 4 A4 pages);
- (o) statement on commitment to partnering (no longer than 1 A4 page).

Evaluation Panels

11. 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 shown in Table 1, against the quality aspects shown in Table 2.

12. **Quality scoring:** the highest scored proposal from Table 2 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 Table 2 will have their Financial Submission returned unopened. A worked example of the Tender Assessment Sheet (Quality) is given in Tables 3 to 6.

[delete as appropriate]*

13. **Financial Panel:** an appraisal of the [*lump sums] [*unit rates] submitted will be undertaken by the Project Manager. 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*

14. **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 acceptable adjusted tendered total will be given 100 marks and all other adjusted totals will have one mark deducted for each percentage point by which the total exceeds that of the lowest. Percentage calculations will be made to one decimal point. A tender priced 13.5% above the lowest will thus receive 86.5 marks. A worked example is given in Table 7

15. **Final Tender Assessment:** marks for each tenderer's Quality Statement and Financial Submission will be aggregated on a quality/price ratio of [20:80]. A worked example is given in Table 8.

16. **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.

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

Envelope A Quality

- i. All the information required under “Quality Statement”.
- ii. A completed Health and Safety questionnaire.
- iii. Details of the tenderer’s insurance policies, including a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.
- iv. 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
 - c. Report on the Environmental Impact of the alternative design, including mitigation measures
 - d. A statement on how the outline Health and Safety Plan would change resulting from the alternative design
 - e. The following completed documents (forms obtainable from the Employer):
 1. Approval in Principle forms for each alternative structure
 2. Addendum Approval in Principle Forms
 3. Stage 1 Safety Audit Certificate.

Envelope B Financial

- i. Completed Form of Tender
- ii. Tendered [*activity schedule] [*bill of quantities]; * [] *delete as appropriate*
- iii. Completed Contract Data Part Two
- iv. If an Alternative Design (either partial or whole) is being submitted include the following additional information:
 - a. An [*alternative priced Activity Schedule] [*fully priced extension to Bill of Quantities] * [] *delete as appropriate*
 - b. A statement setting out the cost savings.
- v. Completed Annex A: Tender Assessment Sheet (Financial)
- vi. All other information required to be submitted at the tender stage.

[Note: include Tables 1 to 8 here from Annex C]

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

APPOINTMENT OF PRINCIPAL CONTRACTOR

PART I: PROJECT SPECIFIC

Written statements are required on the following:

- (a) What is your 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.
- (b) What is your technical and managerial approach for dealing with the significant and unusual hazards and risks identified in the pre-tender health and safety plan issued with the tender documents?
- (c) Confirm that appropriate provision has been made in your tender for all the items listed in Part III of this Questionnaire.

PART II: NON-PROJECT SPECIFIC

Responses are required to the following questions in respect of your company's organisation and management (unless you have already provided this information within the last 12 months - give reference details)

- (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) Provide evidence that you have clear and detailed working methods for achieving the company's policy objectives.
- (g) What is the system and responsibility for reporting health and safety matters within your company?
- (h) What cooperation and involvement is expected of employees, subcontractors and the self employed?
- (i) What procedures are there for safety inspections and audits?
- (j) What is the employee training programme?
- (k) What trade union or employee safety structure is in operation?
- (l) What is the system for control of subcontractors?

PART III: NON-PROJECT SPECIFIC

Provide evidence of your company's procedures for the following (unless you have already provided this information within the last 12 months - give reference details):

- (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.
- (n) provision of welfare, messing, washing and drying facilities in accordance with the Construction (Health, Safety and Welfare) Regulations 1996.
- (o) complying with the Working Time Regulations 1998 with particular reference to any night working.

APPENDIX A - COMPANY ACCIDENT RECORD

Information Required	1997	1998	1999	2000	2001
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 H - 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.

NO.	ACTIVITY	PRICE
1	Establish Site	
2	Topsoil Strip Area A	
3	Topsoil Strip Area B	
4	Culverts	
5	Headwalls for Culverts	
6	Earthworks for Slip Roads	
7	Earthworks for Main Line	
8	Drainage for Slip Roads	
9	Drainage for Main Line	
10	Environmental Bund	
11	Ducts for Slip Roads	
12	Ducts for Main Line	
13	Milling	
14	Capping	
15	Sub-base	
16	Roadbase	
17	Basecourse	
18	Wearing Course	
19	White Lines	
20	Traffic Lights	
21	As-constructed information	
22	Health and Safety file	
	LUMP SUM FIXED PRICE £	

Tenderer:

Signed:

Date:

ANNEX I - 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 £1,460,00	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 £1,550,00	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 Transport, Local Government 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 Two
[*Activity Schedule] [*Bill of Quantities]
[*Works 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. The contract award date (the "Contract Date") shall be ... [B]

[*As agreed in your tender offer I am enclosing two copies of a Contract Agreement by Deed for carrying out these Works. Please sign and seal both copies of the Deed and return both copies to me by ... [C] 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 Contract Data part one.

This contract is for a construction operation and falls within the scope of the Construction Industry Scheme. Please present the appropriate Inland Revenue Subcontractor Tax Certificate (CIS5 or CIS6) or a Registration Card (CIS4) or, alternatively, a 'Certifying Document' instead of the CIS5 certificate to the person named below. You are reminded that in accordance with the Inland Revenue's Construction Industry Scheme's Regulations, the Secretary of State is not permitted to make payment under the contract until these documents are produced.

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

Yours faithfully

XXXXXXXX

Note: the person to whom you must present the appropriate Subcontractor Tax Certificate, Registration Card or Certifying Document isat the above address. Please telephone [number] by [date] to make an appointment.

Key

- * delete or modify as appropriate.
- (A) include any changes during tender or subsequent negotiation
- (B) insert this letter's date
- (C) allow 7 days for return.

6. CONTRACT AGREEMENT

**FORM OF
CONTRACT AGREEMENT
FOR USE WITH ECC**

DATED

20

**THE SECRETARY OF STATE
FOR TRANSPORT, LOCAL GOVERNMENT
AND THE REGIONS**

-and-

[] LIMITED

CONTRACT AGREEMENT

CONTRACT NO: []

THIS AGREEMENT BY DEED is made the..... day of..... 20....

PARTIES: BETWEEN

1. **THE SECRETARY OF STATE FOR TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS** of Eland House, Bressenden Place, London SW1E 5DE (hereinafter called “the *Employer*”) which expression shall include its successors in title, transferees and permitted assignees;

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

- (A) The *Employer* wishes to appoint the *Contractor* to carry out and complete the following works: [enter description of the scheme] for which the *Employer* has submitted to the *Contractor* his Works Information.
- (B) The *Contractor* has submitted his tender offer dated [.....] in respect of the *Employer’s* Works Information which the *Employer* has accepted by letter dated [.....].

OPERATIVE PROVISIONS

1. **Definitions and Interpretation**

In this Agreement by Deed unless the context otherwise requires, words and expressions shall have the same meaning as set out in the Conditions.

2. The Conditions are the Engineering and Construction Contract (second edition November 1995) (“ECC”) incorporating Option [*A] [*B] [*C], together with ECC secondary options [*H, L, M, N, P, R,] T, [X12] and Z (“the Conditions”). [*] as appropriate

3. **Agreement by Deed**

- 3.1. In consideration of the Price of [£.....] as may be adjusted in accordance with the Conditions, the *Contractor* hereby covenants with the *Employer* to Provide the Works and to maintain them until the *defects date* in accordance with this Agreement by Deed.
- 3.2. The documents forming part of this Deed are:
- 3.3. the Conditions
- 3.4. the Contract Data
- 3.5. the Works Information
- 3.6. the Site Information.
- 3.7. the *Contractor’s* tender, including priced [*activity schedule] [*bill of quantities];
- 3.8. the *Employer’s* letter of acceptance
4. The several documents forming this Deed are to be taken as mutually explanatory of one another.

7. ADJUDICATOR'S APPOINTMENT

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) as amended by clause Z27.2 of the Contract 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]

CONTRACTDATA PART ONE: DATA PROVIDED BY THE EMPLOYER

Contract No:

Highways Agency
[insert address]

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

CONTRACT DATA

Part One - Data provided by *Employer*

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 [*X12] and Z of the second edition (1995) of the NEC Engineering and Construction Contract as modified below. **delete as appropriate*
- 1.2 The *works* are: [scheme title]
- 1.3 The *Employer* is: [name]
[address.....]
- 1.4 The *Employer* is represented by: [name]
[address.....]
- 1.5 The *Project Manager* is: [name]
[firm]
[address.....]
- 1.6 The *Supervisor* is: [name]
[firm]
[address.....]
- 1.7 The *Adjudicator* is: [name]
[Leave blank until and if [firm]
Adjudicator appointed] [address.....]
- 1.8 The *Planning Supervisor* is: [name]
[firm]
[address.....]
- 1.9 A list of *adjudicators* from which to make an appointment is in Annex E.
- 1.10 The *adjudicator's appointment* is in Annex F.
- 1.11 The *Works Information* is in
- 1.12 The *Site Information* is in
- 1.13 The *boundaries of the site* are:
- 1.14 The *language of this contract* is English.
- 1.15 The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.
- 1.16 The *period for reply* to a communication is [7] days.
- 1.17 A *health and safety plan* is in Annex D.
- 1.18 The *sector quality schemes* are the National Sector Schemes for Quality Management in Highway Works which are set out in Annex C of Contract Data part two.

1.19 The additional conditions of contract together with deletions of core clauses are given in Section 10 of this document.

Optional paragraph:

1.20 The *Contractor* provides a parent company guarantee in the form set out in Annex G within 14 days of the Contract Date.

Optional paragraph:

1.21 The NEC Partnering Option is hereby added to this contract, as follows:

Option X12

The *Client* is: as in paragraph 1.3 and represented by the person in paragraph 1.4 above.

The *Client's* objective is:

The Partnering Information is in:

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].

2.2 All written work for this contract is produced on recycled paper containing at least 80% post consumer waste and used on both sides of the paper where appropriate.

2.3 The *Contractor* submits to the *Project Manager* a copy of the Construction Industry Board's registration certificate within [14] days of the Contract Date confirming registration of the Site under the Considerate Constructor's Scheme.

2.4 The *Contractor* complies with all special requirements of *statutory bodies* set out in Annex A.

3. Time

3.1 The *starting date* is: [count forward allowing for tender, evaluation and award periods, plus an extra 4 weeks for slippage. For mobilisation purposes, allow about 2 weeks between Contract Date and starting date.]

3.2 The *possession dates* are:

	Part of the Site	Date
1.
2.

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:

<i>Section</i>	<i>Description</i>	<i>Completion date</i>
.....
.....

- 3.5 The *Employer* is not willing to take over the *works* before the *completion date*. [*delete if sectional completion applies*]
- 3.6 The first programme complying with Clause 31.2 shall be submitted within [14] days of the Contract Date. [*Optional: The programme must take due account of the Payment Profile Table in paragraph 5.24 below.*]
- 3.7 The *Contractor* submits revised programmes at intervals no longer than: [4] weeks.

[*Note: delay damages not used with option C. If secondary options L and R are used together add following*]

- 3.8 Delay damages for the *sections* of the *works* are:

<i>Section</i>	<i>Description</i>	<i>Amount per day</i>
1
2

[*If secondary option R is used irrespective of whether L is also used, add para 3.9. See note under para 5.11 below*]

- 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 sterling (£).
- 5.2 The *assessment interval* is [4] weeks.
- 5.3 The period within which payments are made is 30 days.
- 5.4 The *interest rate* is 1% per annum above the average base rate in force from time to time at the following banks: Barclays, Lloyds TSB, HSBC and Royal Bank of Scotland or the rate of statutory interest set by the Secretary of State pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher).
- 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 daily clearance of carriageway* is: £..... per whole day.
- 5.9 The *lane rental charges* for late Completion of the *works* is: £..... per day or part thereof.
- 5.10 The *lane rental charges* for late daily clearance of the carriageway is: £..... per hour or part thereof.

5.11 The *lane rental charges* for correcting defects during the defects period is: £..... per hour or part thereof.

[Note: if items 5.7 to 5.11 above are used, also include delay damages specified at “£1 per day” or, if a ‘hybrid’ scheme involving partial lane rental works, calculate the daily delay damages on the basis of actual economic loss for the element of works involved.]

[If Z37 is used include paragraphs 5.12 to 5.14 below.]

5.12 The bonus for each *railway possession* not required below the number stated in the Contract Data is: £..... per *railway possession*.

5.13 The charge for each additional *railway possession* required to Provide the Works above the number stated in the Contract Data is: £..... per *railway possession*.

5.14 The charge for each additional *railway possession* required for maintenance purposes between Completion and the *defects date* above the number stated in the Contract Data is: £..... per *railway possession*.

[If main option B is used, add following]

5.15 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 as ISBN 0 11 552327 8 by The Stationery Office.

[If secondary option N (price fluctuation) is used, add paragraphs 5.16 to 5.18]

5.16 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		

5.17 The *base date* for indices is:

5.18 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 price) is used, add paragraphs 5.19 to 5.21 below]

5.19 The *Contractor’s share percentages* and the share ranges are:

<u>Share range [Target price base figure = 100%]</u>	<u>Contractor’s share percentage</u>
less than [80] % of target price:	[25] %
from [80] % to [90] %:	[35] %
from [90] % to [110] %:	[50] %
from [110] % to [120] %:	[35] %
greater than [120] %:	[25] %

Optional paragraph

5.20 The *Contractor* is paid his full fee entitlement based on the agreed target price irrespective of whether the eventual cost of the scheme is below or above the agreed target price.

Optional paragraph

5.21 The *Contractor's* share percentage is paid on the following basis: if the *works* are completed by the *completion date* 100% of entitlement; this entitlement is reduced by 10% for each week (or part thereof) that the *works* remain uncompleted after the *completion date*.

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

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

[If clause Z33 is used include the following]

5.23. The *Contractor's* value share percentage is: [40%]

[If payment profiling is required include paragraphs 5.24 to 5.30 below and Z12A]

5.24 Payments made to the *Contractor* shall be made in accordance with the following Payment Profile Table. There is no obligation on the *Employer* to pay up to these cash limits if insufficient work has been done to justify such payment.

Payment Profile Table

<i>Period for payment</i>	<i>Start Date</i>	<i>End Date</i>	<i>Maximum payment</i>	<i>Date of residual payment</i>
1	Contract Date	*	*	*
2	*	*	*	*
3	*	*	*	*
4	*	Completion of the whole works	None	Not applicable

(* to be completed by the tender compiler prior to the issue of tender documentation).

Schedule of Exclusion

5.25 Payments to the *Contractor* for the following elements of the *works* are not limited by the *maximum payment*:

-
-
-

5.26 The *period of payment* is the period commencing on the *start date* and expiring on the *end date* in respect of a given period as set out in the Payment Profile Table.

5.27 The *maximum payment* is the maximum aggregate amount which the *Employer* may be required to pay the *Contractor* during a given *period of payment* in connection with the contract and is either the figure referred to as the *maximum payment* in respect of a given *period of payment* in the Payment Profile Table or any greater revised figure as may be notified to the *Contractor* and the *Project Manager* in writing by the *Employer*. Provided that:

- in determining whether the *maximum payment* has been paid, no account is taken of *excluded monies* paid but all other monies of whatever nature (including Value Added Tax and Retention Monies) paid by the *Employer* to the *Contractor* is aggregated; and
 - the fact that there is a *maximum payment* for a given *period of payment* does not limit the maximum amount of *excluded monies* which the *Employer* may be required to pay to the *Contractor* in accordance with the contract during such *period of payment*.
- 5.28 The *residual sum* is the amount of those monies identified in payment certificates (not being *excluded monies*) where payment of the same would result in the *maximum payment* for the *period of payment* for which the payment certificate is issued being exceeded.
- 5.29 The *date of residual payment* is the date referred to in the Payment Profile Table as the *date of residual payment*.
- 5.30 The *excluded monies* are any retention monies payable but not yet paid or any monies paid or payable in respect of those areas of the *works* (if any) identified in the Schedule of Exclusion.

Compensation events

[If clause Z25 is used deleting weather as a compensation event place “Not Used” against paragraphs 6.1 and 6.2]

- 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 have been incorporated into Z clauses under section 10 below.

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 *tribunal* is arbitration. The arbitration procedures is the Institution of Civil Engineers Arbitration Procedure (1997).

10. Additional conditions of contract

ANNEX A: SPECIAL REQUIREMENTS

1. A *statutory body* is 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.
2. The *Contractor* complies at his own cost with all special requirements of *statutory bodies* whether or not set out below.

[List here any appropriate Special Requirements in relation to statutory bodies, eg]

National Grid plc
National Telecommunications Ltd
British Airports Authority
British Telecommunications plc
Motorway Communications Systems
Water and Sewerage Companies
Electricity Distribution Companies
Environment Agency
Transco plc
Coal Authority
British Waterways Board
Cable Television Companies
British Pipeline Agency
Government Pipeline and Storage System
Traffic Control Systems
Department of Environment, Food and Rural Affairs
The Civil Aviation Authority
Railtrack
Royal Air Force
London Underground Ltd

ANNEX B: CERTIFICATES

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- Part I Payment Certificate
- Part II Completion Certificate
- Part III Defects Certificate
- Part IV Design Check Certificate

ANNEX B

**PART I
PAYMENT CERTIFICATE**

Highways Agency
PAYMENT CERTIFICATE
(ECC Conditions of Contract Option A/B/C)*

ECC (A/B/C) 501
Certificate No:

Report N°:
Assessment Date:

Contract: _____

Contractor:

Project Manager under the Contract:

Payment Address:

Employer:

Final Date for Payment:

	(£)
1. PRICE OF WORK DONE TO DATE Plus other amounts to be paid [Clause 50.2]	
2. ADD/DEDUCT* Price adjustment for inflation [Secondary Option N]	
3. Amount after application of adjustment for inflation	
4. DEDUCT Retention Money now to be held [Secondary Option P]	
5. Net amount due (3-4).....	
6. DEDUCT total amount previously certificated for payment including releases of retention money, if any	
7. AMOUNT DUE BEFORE VAT & ADJUSTMENTS (5-6)	
8. VALUE ADDED TAX	
at Standard Rate (17.5%) =	Total VAT Payable
at Zero Rate =	
9. ADD/DEDUCT* Delay Damages [Secondary Option R]	
10. TOTAL AMOUNT DUE	

WE CERTIFY that the sum of _____ is now due to the Contractor in accordance with the terms of the Contract.

Signed
Project Manager under the Contract

Date

EMPLOYER'S USE ONLY (NOT PART OF PAYMENT CERTIFICATE)

Amount of Certificate (10)

Other Adjustments *(ADD/DEDUCT)

TOTAL PAYMENT

Signed
HA Project Manager

Date

* Delete as necessary

ANNEX B

PART II

Certificate Seq. No.....

COMPLETION CERTIFICATE

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

1. We certify that:

*(a) The whole of the works were 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:.....

Date:.....

ANNEX B

PART III

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:.....

ANNEX B

PART IV
DESIGN CHECK CERTIFICATE

Certificate Seq. No.....

Form of Certificate to be used by the Contractor's engineer (or design organisation) for the checking of designs prepared by the Contractor - see clause Z34.

1. We certify that we have used reasonable professional skill and care:-
 - (a) in the checking of design particulars comprising [.....] (description of works) so as to satisfy the terms of the contract including the following standards [.....]
 - (b) in translating the design particulars into drawings, the unique numbers of these drawings being [.....]

Signed:.....
Contractor's engineer/Design organisation
(Partner or Director)

Name:.....
Date:.....

2. This certificate is:-
 - (a) accepted*
 - (b) accepted with comments as follows:*
 - (c) returned unaccepted with comments as follows:*

*delete as appropriate

Signed:.....
Project Manager

Name:.....
Date:.....

ANNEX C: FORM OF RETENTION BOND BY DEED

(2½% of Contract Sum)

WHEREAS THE SECRETARY OF STATE FOR TRANSPORT, LOCAL GOVERNMENT 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 but in any event this Guarantee shall expire in full not later than *[insert date - being six months after Defects Certificate]*.
6. Any claims by the Employer upon the Guarantor pursuant to this Guarantee shall be made in writing and received by the Guarantor by not later than close of business on *[insert date – being date shown in clause 5]* failing which and notwithstanding any other provision hereof the liability of the Guarantor pursuant to this Guarantee shall terminate automatically and in full.
7. The benefit of this Guarantee may only be assigned with the prior written consent of the Contractor and the Guarantor.
8. Any payment made by the Guarantor under this Guarantee shall reduce the maximum amount of the Guarantor’s aggregate liability thereunder. The Guarantor shall not at any time be obliged to concern itself or make enquiries as to whether the Employer is entitled to make a demand under this Guarantee.

9. The construction, validity and performance of this Bond shall be governed by English law and any dispute which may arise between the Employer, the Guarantor and the Contractor in connection with this Guarantee shall be referred to the exclusive jurisdiction of the English Courts.
10. No person who is not a party to the Contract shall have a right to enforce any term of the Contract by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof the Guarantor has caused this Bond by Deed to be executed this day of.....20.....

The Common Seal of the [name of Surety]
was hereunto affixed in the
presence of:

Authorised signatories of [name of Surety]

signed by:

(1)(name)
[Director]

(2)(name)
[Director] [Secretary]

.....(address)
.....

ANNEX D: HEALTH AND SAFETY PLAN

[This is a project-specific document]

ANNEX E: PROPOSED NAMES OF ADJUDICATORS

[Include three names, addresses and telephone numbers.]

ANNEX F: AGREEMENT APPOINTING 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) as amended by Clause Z27.2 of the Contract 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

ANNEX G: FORM OF PARENT COMPANY GUARANTEE

THIS GUARANTEE is made the _____ **day of**

BETWEEN

- 1 Ultimate Parent Company [_____] (company no [_____]) whose registered office is at [_____]
- 2 Employer **THE SECRETARY OF STATE FOR TRANSPORT,
LOCAL GOVERNMENT AND THE REGIONS** of Eland House, Bressenden Place, London SW1E 5DE

RECITALS

- A** The Employer has entered into a contract dated [_____] (“the Contract”) with [_____] (“the Contractor”) whose registered office is at [_____] to carry out and complete [the works.....] for a price, as defined in the Contract, of [.....] pounds, [£.....] in accordance with the Contract No [.....].
- B** 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.

OPERATIVE PROVISIONS

1. Unless the context otherwise requires words and expressions in this Guarantee have the same meaning as set out in the Contract.
2. We [name of Ultimate Parent Company] 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 the Employer and not as a surety that the Contractor shall perform all of his obligations or liabilities contained in and in accordance with the Contract.
3. If the Contractor shall fail to so perform any of his obligations under the Contract or any of his 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.
4. 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.
5. 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.
6. The rights and liabilities of the Guarantor under this Guarantee shall be co-extensive with the rights and liabilities of the Contractor under the Contract. For such purposes the terms and conditions of the Contract are deemed to be incorporated within this Guarantee.

7. The Employer may assign the benefit of this Guarantee without the prior written consent of the Guarantor provided that this Guarantee is only assigned as part of the Contract. The Guarantor shall not assign or part with any interest whatsoever.
8. Any notice or other communication required under this Guarantee shall be given in writing and shall be deemed to have been properly given if compliance is made with Section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).
9. No person who is not a party to this Guarantee shall have a right to enforce any term of the Guarantee by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.
10. The Guarantee shall come into force on the day it is dated. 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 but in any event this Guarantee shall expire in full not later than *[insert date - being 12 years after the Completion Date]*.
11. This Guarantee is subject to English law and the jurisdiction of the English Courts.

Delivered as a deed on the date of this document.

Executed under the common seal of *[the Parent Company]* in the presence of:

Director

Director/Secretary

The corporate seal of **THE SECRETARY OF STATE FOR TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS** is affixed and is authenticated by:

[.....] (Print name of authorised signatory)

Signature

Authorised by Secretary of State

9. CONTRACT DATA PART TWO

[Scheme Name]

CONTRACT DATA PART TWO: DATA PROVIDED BY THE CONTRACTOR

Note to Tenderers

Tenderers are expected to practice an “open book” approach when completing and returning this document. For example, details requested for labour rates should reflect actual rates paid to employees. The fee percentage includes profit and overheads such as head office support costs. We may request a letter from the successful tenderer’s auditor certifying the reasonableness of the proposed fee and the accuracy of rates and salaries paid to employees before awarding the contract.

Generic terms are used in this document such as “Senior Engineer”, “Site Engineer”, etc. Tenderers should exercise discretion in matching their own employees and titles to suit these descriptions for a particular project. No spaces requiring information should be left blank or marked “N/A”, “nil”, “-”, “0” or “included” but shown with actual rates, percentage figures and details used by the tenderer for pricing contracts. Failure to observe this requirement may lead to rejection of the tender. The original copy, completed in ink, must be returned with tender submissions.

Tenderer’s name
[insert address]

12. Our proposed names of Subcontractors, their experience and qualifications, and areas of work envisaged are given in Annex A. [Note: include one Subcontractor only for each area of work.]
13. We confirm that we are registered under the Inland Revenue's Construction Industry Scheme. We hold the following valid type certificate:
14. Details of our insurance policies held or proposed to meet the full requirements of this contract are given in Annex B. We confirm that any excess included in our insurance policies does not exceed the permitted limits as follows:
 - 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 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 does not apply.
15. Where structural steelwork applies, we confirm that *either*
 - a. *we are a steelwork contractor *or*
 - b. *a proposed named Subcontractor is a steelwork contractorlisted in the Register of Qualified Steelwork Contractors (or state equivalent from an EU country) for the type and value of the work to be undertaken. [*The equivalent scheme is ...] [*strike out words not applicable*]
16. We confirm our agreement to using the "full" Schedule of Cost Components to assess compensation events for this contract.
17. In respect of *sector quality schemes* set out in Annex C, we attach at Annex D documentary evidence showing either compliance or preparation for compliance and the expected compliant date.

Optional paragraph

18. The *quality statement* is in a separate volume marked: Quality Statement.
19. We confirm that a parent company guarantee [*is not necessary for this contract.] [*will be provided in the form set out in Annex G of Contract Data part one within 14 days of the Contract Date]. [*Tender compiler: strike out words not applicable*]
20. The number of *railway possessions* required to Provide the Works is:
21. The number of *railway possessions* required for maintenance and inspection purposes between Completion and the *defects date* is:

DATA FOR SCHEDULE OF COST COMPONENTS

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

Category of employee	Hourly rate
Senior Engineer
Engineer
Technician
Skilled Labour
Semi Skilled Labour

22.2. The percentage for manufacture and fabrication overheads is%

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

Category of employee	Hourly rate
Design Manager
Senior Design Engineer
Design Engineer
Senior Technician
Technician

22.4. The percentage for design overheads is%

22.5. 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*

22.6. Except for special items the percentage for equipment depreciation and maintenance is %

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

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

22.8. The percentage for Working Areas overheads is%

22.9. The percentage for people overheads is

*Only used with the Shorter
 Schedule of Cost Components*

22.10 The published list of Equipment is the last edition of the list published by the Civil Engineering Contractor's Association.

22.11 The percentage for adjustment for listed Equipment is % [Insert either a “+” or a “-“ figure]

22.12 The rates of other Equipment are:

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

[If main options C or D (target price) is used, add paragraphs 22.13 and 22.14 below]

22.13 The time charge rates for time charge work are:

Equivalent Annual Salary Band £~	Hourly Rate Time Charge £ / hr
13,500	
13,501 - 16,000	
16,001 - 19,000	
19,001 - 23,000	
23,001 - 27,500	
27,501 - 33,000	
33,001 - 39,500	
> 39,500	

22.14 The time charge rates are determined by reference to the appropriate salary band set out in the above table and includes all employment costs, (including salary) bonus, National Insurance, pension contribution, subsistence and travel allowances, overtime payments, cost of car provision, cost of paid annual leave, cost of medical or accident insurance, office accommodation, telephone charges, administration staff, recruitment costs, copying and printing and computing costs.

NAMED SUBCONTRACTORS

Qualifications and experience of proposed Subcontractors:

Area of Work	Name of Sub-contractor	Experience and Qualifications

[Note: include one subcontractor only for each area of work.]

DETAILS OF CONTRACTOR'S INSURANCE POLICIES

[Notes to tenderer:

- a) *If a two envelope tender, this Annex B should be submitted as a separate document and included in "Envelope A Quality". If awarded the contract, this Annex B will then be attached to Contract Data part two.*
- b) *Include a signed statement on letter headed note paper explaining any excess insurance amounts and how they will be financed.]*

The following are *sector quality schemes* for Highway Works

Scheme Number	National Sector Schemes for Quality Management in Highway Works (National QMSS)	Approved National QMSS	State if Contractor is compliant or name a compliant subcontractor or supplier
1	Manufacture of Fencing Components	-	
2	Supply and Erection of Fences	-	
2A	Design and/or Supply, Installation and Repair of Fences	Yes	
2B	Vehicle Restraint Systems	Yes	
3	Manufacture of Industrial Fasteners and Associated Items	-	
4	Preservative Treatment of Timber	Yes	
5	Fabrication and Installation of Bridge Parapets and Cradle Anchorages	-	
6	Manufacture, Supply and Verification of Lighting Columns and Bracket Arms	Yes	
7	Application of Road Marking Materials and Road Studs to Road Surfaces	Yes	
8	Installation and Maintenance of Traffic Signals	-	
9	Traffic Sign Manufacture	-	
10	Installation and Maintenance of Electrical Apparatus and Cabling for Highway Lighting and Traffic Signs	-	
11	Supply and Installation of Post-Tensioning Systems in Concrete Structures	-	
12A	Static Temporary Traffic Management on Motorways and High Speed Dual Carriageways for Schemes Incorporating Contra flow Operations and/or Temporary Road Markings	Yes	
12B	Static Temporary Traffic Management on Motorways and High Speed Dual Carriageways for Schemes not Incorporating Contra flow Operations and/or Temporary Road Markings	Yes	
12C	Mobile Lane Closures Temporary Traffic Management on Motorways and Dual Carriageways	Yes	
13	Supply and Application of Surface Dressing to Road Surfaces	Yes	
14	Production of Asphalt Mixes	Yes	

Note: full details of National QMSS is given in Appendix A of the Specification for Highway Works - see Volume 1 of the Manual of Contract Documents for Highway Works published as ISBN 0 11 551979 3 by The Stationery Office.

Compiler: please amend this table to include only National QMSS relevant for your specific scheme.

ANNEX D

Attached are copies of documents showing compliance or preparation for compliance with expected compliant dates in respect of *sector quality schemes* as listed in Annex C

10.SHORT CONTRACT DOCUMENTS

Contents

1. Instructions for Tendering and Guidance Notes
2. The Contractor's Offer
3. The Employer's Acceptance
4. Contract Data
 - Appendix 1: Adjudicator's Appointment
 - Appendix 2: Questionnaire on Health and Safety
 - Appendix 3: Pre-Tender Health and Safety Plan
 - Appendix 4: Certificates
 - Appendix 5: Form of Retention Bond
 - Appendix 6: Named sub-contractors and key people
 - Appendix 7: Special Requirements of Statutory Undertakers
5. Works Information
 - Description of the Works
 - Drawings
 - Specifications
 - Constraints on how the Contractor Provides the Works
 - Requirements for the programme
 - Services and other things provided by the Employer
6. Site Information
 - Ground Investigation Survey
7. Price List
 - Materials and quantities
 - Maintenance
8. Dayworks schedule of rates

1. INSTRUCTIONS FOR TENDERING AND GUIDANCE NOTES

[Scheme title]

**INSTRUCTIONS FOR TENDERING
AND GUIDANCE NOTES
ENGINEERING & CONSTRUCTION SHORT CONTRACT
PRICED CONTRACT WITH
BILL OF QUANTITIES**

Contents

Preamble
EC Short Contract Features
General Requirements
Tender Evaluation and Submission
List of documents with Invitation to Tender
List of documents to be returned with Tender
Construction Industry Scheme

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 construction, completion, testing, commissioning and maintenance of the following works: *[describe works]*. The Employer will be the Secretary of State for Transport, Local Government and the Regions but all administrative functions will be performed by the Highways Agency *[enter address, telephone number and e-mail address]* and whose project sponsor for the contract is *[enter name]*.
2. The works will be carried out under terms and conditions of the Engineering and Construction Short Contract, First Edition, published in July 1999 for the Institution of Civil Engineers by Thomas Telford Ltd as ISBN 0 7277 2670 6 priced £15. Tenderers must familiarise themselves with these conditions and any modifications or additions made by the Highways Agency.
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.

EC SHORT CONTRACT FEATURES

4. Tenderers must be aware of the following:
 - a. **Programme:** tenderers are required to submit an outline programme as part of their submission. It is required to enable the 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.
 - b. **Contract award date:** a period of about two weeks will be allowed between award of contract and the starting date specified in the Contract Data as a mobilisation period;
 - c. **Completion date:** this date has been specified in the Contract Data. If a tenderer considers that this date requires adjustment they must propose their own completion date for the whole of the works (and any sections thereof) in a separate statement. This may be an earlier or later date (if an earlier date that date will then become the Completion date) but no premium will be applied in tender evaluation for an earlier completion date. Tenderers must also calculate and enter appropriate quantities for any time related items in the preliminaries section of the bill of quantities.
 - d. **Discrepancies:** if any discrepancy arises between the priced bill of quantities and the tendered price, the tendered price will take priority;
 - e. **Management functions:** the Highways Agency has retained [*] to whom it has delegated responsibility for managing this project (see clause 13.4 of the EC Short Contract). They are referred to as the "Contract Administrator". *[*enter Consultant engineers for the scheme]*
 - f. **Queries:** any queries arising from the tender documents which may have a bearing on the tender should be raised with the Employer as soon as possible (preferably in writing) but in any case not later than two weeks 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;
 - g. **Adjudication:** the Model Adjudication Procedure, published by the Construction Industry Council, second edition dated November 1998 will be used for this contract. An Adjudicator will be appointed from the Employer's list of adjudicators if required and details of the terms of the appointment are given at Appendix 1. The Employer and the Contractor will each bear 50% of the costs of the Adjudicator.
 - h. **Site Information:** 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 the EC Short Contract. Tenderers may make their own arrangement to carry out additional surveys. Prior notice must be sought from the Employer for such surveys.

- i. **Additional clauses:** several additional clauses have been added to the EC Short Contract which are set out in the Contract Data.
- j. **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. All schedules submitted with tenders giving unit rates must be written in ink and be the original copy. If such schedules contain pencil entries or are photocopies of documents the tender will be rejected. If necessary, the Employer may contact a tenderer whose tender has required arithmetical adjustment.

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 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. manufacturers' and suppliers' test certificates.
7. **Special Requirements:** where applicable special requirements of relevant Statutory Undertakers are set out in Appendix 7 of Contract Data. It may be necessary when arranging insurance cover required by clause 82 of the EC Short Contract to let insurers know of any such 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 licence or authorisation is required from the Environment Agency responsibility for obtaining it falls to the Contractor;
9. **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.
10. **Insurance:** details of insurance policies held or proposed meeting requirements stated in the Insurance Table within clause 82 of the EC Short Contract 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.
11. **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.

12. **Insurance queries:** should be raised in writing with the Employer at the earliest opportunity but in any event two weeks 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.
13. **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 Contract Administrator 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.
14. **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.
15. **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
16. **Health and safety plan:** an outline plan is given in Appendix 3. 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.
17. **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 based on the following formula which reflects both loss of capital invested and extra administrative costs incurred as a result of the delay in completion of the contract: final award price \times 12.5% \div 365 days + daily supervision cost = £..... per day. The amount for supervision costs for this contract is expected to be (£450.00) per day. Sectional completion rates will be calculated on a pro rata basis. All relevant figures will be inserted into the Contract Data by the Employer prior to any award of contract. *[Note to tender compiler: "supervision costs" should cover actual daily costs for resources, provision of facilities and additional traffic management, etc.]*

TENDER EVALUATION AND SUBMISSION

18. **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 **strictly in accordance with the tender document as issued (or as subsequently amended by the Employer) will be accepted for consideration.** The Employer's decision on whether a tender is acceptable will be final and the tenderer will not be consulted. **Qualified tenders will be excluded from the competition and the tenderer will be notified.**
19. **Tender evaluation:** tenders will be assessed on the basis of the most economically advantageous cost. The Employer does not bind himself to accept the lowest or any tender.
20. **Form of Tender:** tenders must be made on the accompanying form of Contractor's Offer which must be signed by, or on behalf of, the tenderer and returned together with all the information requested in paragraph 32 below. 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.
21. **Advance payment:** the principles governing public procurement require that payments for goods, works or services are made after delivery. Any indication of advance payments within a tender will be examined to decide whether a tender in such a form is acceptable. If the Employer considers that advance payments is likely to occur it reserves the right to require the tenderer to spread such payments over the duration of the works.

22. **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

Addressed to Highways Agency
 Procurement [South East] [Midlands] [North]
 [enter address]

To arrive not later than [noon] on 20.....

23. **Surplus documents:** any drawings and other documents not returned with the tender should be sent to the Contract Administrator [*Note to tender compiler: include name and address here.*]

CONSTRUCTION INDUSTRY SCHEME

24. **Construction Industry Scheme Regulations:** the specified work will be a construction operation as defined in the Inland Revenue's Construction Industry Scheme Regulations. Confirm that you have registered with the Inland Revenue as a sub-contractor under the Scheme, and state whether a Subcontractor Tax Certificate (CIS5 or CIS6) or a Registration Card (CIS4) is held. Alternatively, confirm that you are a local authority or other public body exempt from holding a certificate.

25. The successful tenderer, unless exempt from holding a certificate, must present to the Highways Agency the appropriate CIS4, CIS5 or CIS6 document (or alternatively instead of a CIS5 Certificate a 'Certifying Document') as proof of registration and to enable the Agency to determine whether the labour element of payments made under the contract should be gross or net of tax. Until you present the appropriate Subcontractor Tax Certificate, Registration Card or Certifying Document, the Employer is not permitted to make any payments for work done.

LIST OF DOCUMENTS WITH INVITATION TO TENDER

26. The following is a list of documents included with this invitation:

1. Instructions for Tendering
2. Form of Contractor's Offer
3. Form of Employer's Acceptance
4. Contract Data with Appendices
5. Works Information
6. Site Information
7. Price List

LIST OF DOCUMENTS TO BE RETURNED WITH TENDER

27. The following is a summary of information required to be submitted with the tender:
- i. Completed Contractor's Offer
 - ii. Tendered Price List (Bill of Quantities)
 - iii. A completed Health and Safety Questionnaire, see Appendix 2
 - iv. Details of Proposed Sub-Contractors and Key People, see Appendix 6
 - v. Written confirmation that the Employer's list of adjudicators and terms of appointment are acceptable. If they are not, set out alternative proposals
 - vi. Details of the tenderer's insurance policies, including a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.
 - vii. Written confirmation of registration under Inland Revenue's Construction Industry Scheme Regulations.

2. THE CONTRACTOR'S OFFER

The Contractor is

Name

Registered address

.....

Telephone Fax

E-mail address

To: The Secretary of State for Transport, Local Government and the Regions

Highways Agency

[Enter address]

[Scheme' s title]

Contract No

Sir,

1. The Contractor offers to Provide the Works and to maintain them until the defects date in accordance with the following documents:

- 1.1 Conditions of Contract being the Engineering and Construction Short Contract, First Edition, dated July 1999, published as ISBN 0 7277 2670 6 and as amended by the Highways Agency
- 1.2 Contract Data
- 1.3 Works Information
- 1.4 Tendered Prices
- 1.5 Named key people and sub-contractors - Appendix 6.

2. We undertake to start and complete the works on the dates stated in the Contract Data.

3. In consideration our offered total of the Prices is £ ... (Ex VAT) (*enter the total of the Prices from the Price list*). We understand that this amount may be adjusted in accordance with the Conditions of Contract. These Prices include the following percentages:

- 3.1 The percentage for overheads and profit added to the Contractor's Cost for people is ... %.
- 3.2 The percentage for overheads and profit added to other Contractor's Cost is ... %.

4. 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 authorized 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).
5. We also certify that the principles described in paragraph (i) and (ii) above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with the tender and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.
6. 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 unincorporated; "any agreement or arrangement" includes any transaction, formal or informal and whether legally binding or not; and "the works" means the work in relation to which this tender is made.

Dated this day of 20

Signature.....In capacity of
(e.g. Director, Secretary, etc)

Name
(in capitals)

Duly authorized to sign tenders for and on behalf of:

.....

3. THE *EMPLOYER'S* ACCEPTANCE

The *Employer* accepts the *Contractor's* offer to Provide the Works. This constitutes 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.

Signed on behalf of the Employer

Name

Position

Signature Date

4. CONTRACT DATA

1. The *Employer* is the Secretary of State for Transport, Local Government and the Regions. For administrative matters contact the Highways Agency [*Give address, contact name, telephone and e-mail*]
2. The *Employer's* delegate is the *Contract Administrator*, as follows:

Name

Firm

Address.....
3. The *works* are: [scheme title]
4. The *site* is: [insert boundaries of the site]
5. The *contract date* is the date of the *Employer's* Acceptance.
6. The *starting date* is:
7. The *completion date* is:
8. The *period for reply* to a communication is 7 days.
9. The *defects date* is: [52 weeks]
10. The *defect correction period* is: [4 weeks.]
11. The *delay damages* are £... per day.
12. The *assessment day* is the last day of each calendar month.
13. The *retention* is [5%]
14. The *Adjudicator* is: [*leave blank until and if adjudicator is appointed.*]

Name

Firm

Address.....
15. The *Planning Supervisor* is:

Name

Firm

Address.....
16. A *health and safety plan* is at Appendix 3. The principal contractor is required to develop this plan in accordance with the requirements of the CDM Regulations and to co-operate with the *Planning Supervisor* to enable him to fulfil his duties under the Regulations.
17. The *interest rate* is 1% per annum above the average base rate in force from time to time at the following banks: Barclays, Lloyds TSB, Royal Bank of Scotland and HSBC or the rate of statutory interest set by the Secretary of State pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher).
18. The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer's* property in excess of £5m for any one event.

19. The *Employer* does not provide any insurance stated in the Insurance Table.
20. The minimum amount of cover for third party insurance stated in the Insurance Table is £5m for any one event.
21. The *language of this contract* is English.
22. The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.
23. The *currency of this contract* is sterling.
24. The first *programme* complying with the Works Information is submitted within 5 days of the *contract date*.
25. The Contractor submits revised *programmes* as requested by the *Contract Administrator*.
26. The *adjudication procedure* is the Construction Industry Council's Model Adjudication Procedure, second edition dated November 1998, as amended by additional Clause 6.2 below, and any amendments or alterations thereto current at the date of the notice of dispute.
27. The *tribunal* is arbitration.
28. The *arbitration procedure* is the Institution of Civil Engineers Arbitration Procedure 1997.
29. All written work for this contract is produced on recycled paper containing at least 80% post consumer waste and used on both sides of the paper where appropriate.
30. The *conditions of contract* are the NEC Engineering and Construction Short Contract first edition dated July 1999 published by the Institution of Civil Engineers as ISBN 0 7277 2670 6 and the following additional conditions:

Dates for payment

Clause 51.1 is deleted and replaced by the following:

- 1.1 For the purpose of Sections 109 and 110 of the Housing Grants, Construction and Regeneration Act 1996
 - the *Contract Administrator'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 next *assessment day* which follows receipt of an application for payment by the *Contractor* and
 - the final date for payment is 30 days after the date on which the payment becomes due.
- 1.2 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.

Corrupt practices

2. The *Contractor* does not
 - offer or give 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
 - enter 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.

Principal contractor

3. The *Employer* appoints the *Contractor* to act as principal contractor for the purposes of the Construction (Design and Management) Regulations 1994 (1994 S.I. 3140).

Confidentiality

4. The *Contractor*
 - has the right to use the Works Information or any other material relating to the *works* only for the purposes of providing the *works* and may make this right available to sub-contractors
 - returns the Works Information or any other material relating to the *works* to the *Employer* at the expiry of the *defects date*
 - does not disclose information obtained in connection with the *works* or this contract to any other person without the *Employer's* consent.

RECOVERY OF SUMS DUE FROM CONTRACTOR

5. 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.

SETTLEMENT OF DISPUTES

Clauses 93 and 94 are deleted and replaced by the following:

- 6.1 Either party may give notice to the other party at any time of his intention to refer a dispute to adjudication. The notifying party refers the dispute to the *Adjudicator* within seven days of the notice.
- 6.2 The procedure for an adjudication is that set out in the Construction Industry Council's Model Adjudication Procedure issued November 1998, together with any amendments to that procedure current at the commencement of the adjudication and as amended as follows:
 - each time it appears the word "Adjudicator" is replaced by "*Adjudicator*"
 - paragraph 4 is amended to read as follows: "The *Adjudicator's* decision shall be binding until the dispute is finally determined by the *tribunal* or by agreement."
 - the words "legal proceedings or arbitration" in paragraph 5 are deleted and replaced with the words "the *tribunal*"

- the following is added to the end of paragraph 5: “The *Adjudicator’s* decision shall be enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.”
- paragraph 7 is deleted
- the words “and the Parties shall accept that body’s nomination” is added to the end of the second sentence in paragraph 10
- the words “and the parties shall accept that body’s nomination” are added to the end of the first sentence in paragraph 11
- the following is added to the end of paragraph 11: “The replacement *Adjudicator* shall have the power to decide on disputes that were submitted to his predecessor but a decision had not been given at the time when his predecessor resigned or became unable to act. The date of his appointment is the date of submission of these disputes to him as *Adjudicator*”
- the following is added to the end of paragraph 24: “The *Adjudicator* shall provide reasons to the Parties.”
- the following is added to the end of paragraph 26: “The *Adjudicator’s* powers shall include the power to review and revise any action or inaction of the *Contract Administrator* related to the dispute.”
- paragraph 27 is deleted and replaced by the following: “If the *Adjudicator’s* decision includes assessment of additional cost or delay caused to the *Contractor*, he shall make his assessment in the same way as a compensation event is assessed.”
- the first sentence in paragraph 30 is deleted and replaced with the following: “Unless and until the dispute has been determined by the *tribunal* or by agreement, the Parties shall be entitled to the redress set out in the decision and to seek summary enforcement.”
- the words “legal proceedings or arbitration” and “court or arbitrator” in paragraph 31 are deleted and replaced by the words “the *tribunal*” and “*tribunal*” respectively
- a new paragraph 36 is added and reads as follows: “Any communication between a Party and the *Adjudicator* shall be communicated to the other Party.”

6.3 The *Adjudicator* is appointed by the parties on the terms and conditions set out in the adjudicator’s appointment at Appendix 1.

REVIEW BY THE TRIBUNAL

Clause 95 is deleted and replaced by the following:

7.1 Neither party is entitled to serve a notice of referral to the *tribunal* until the *Adjudicator* has delivered his adjudication in accordance with additional clause 6. Thereafter, if either party is dissatisfied with the adjudication, except in connection with the enforcement of the *Adjudicator’s* decision, he may then refer the dispute to the *tribunal* by serving a notice to refer (a “Notice to Refer”) on the other party provided that the referring party has notified the other party of its intention to do so not more than four weeks after the end of the time allowed for the *Adjudicator’s* decision.

7.2 The Notice to Refer lists the matters which the issuing party wishes to be referred to the *tribunal*. If a Notice to Refer has been served in writing by one party on the other then the dispute is referred to the *tribunal* acting as a single person 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 Chartered Institute of Arbitrators or in his absence or unavailability his deputy.

DELETION OF CLAUSES

8. The following clauses are deleted:

- clause 94 (The Adjudicator)
- clause 95 (Reference to the Tribunal)

CONSTRUCTION INDUSTRY SCHEME

9. This contract falls within the scope of the Construction Industry Scheme Regulations. If the *Contractor* (Sub-contractor in terms of the Scheme) does not hold a valid Inland Revenue Sub contractor 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.

RIGHTS OF THIRD PARTIES

10. No person who is not a party to the Contract shall have a right to enforce any term of the Contract by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

APPENDIX 1: APPOINTMENT OF THE ADJUDICATOR

APPENDIX 2: QUESTIONNAIRE ON HEALTH AND SAFETY

APPENDIX 3: HEALTH AND SAFETY PLAN

APPENDIX 4: CERTIFICATES

Part I Payment Certificate
Part II Completion Certificate
Part III Defects Certificate

APPENDIX 5: FORM OF RETENTION BOND

APPENDIX 6: NAMED SUB-CONTRACTORS AND KEY PEOPLE

APPENDIX 7: SPECIAL REQUIREMENTS OF STATUTORY UNDERTAKERS

[Note: apart from Appendix 3 which is project-specific, all other appendices may be drawn down from the ECC Model Contract Document.]

5. WORKS INFORMATION

Include the following headings:

- Description of the Works
- Drawings
- Specifications
- Constraints on how the Contractor Provides the Works
- Requirements for the programme
- Requirements for inspections and testing
- Services and other things provided by the Employer

6. SITE INFORMATION

[Project-specific information]

7. PRICE LIST

[Note to tender compiler: include either an “activity schedule” for lump sum payments or a “Bill of Quantities” for unit rates.]

8. DAYWORK SCHEDULE

Daywork ordered by the *Contract Administrator* shall be paid for at the rates and prices and under the conditions contained in the Schedule of Dayworks carried out incidental to 'Contract Work' issued by the Civil Engineering Contractor's Association current at the date of execution of the Daywork modified and added to as follows:

- a. Section 1 Labour. The figure of the percentage addition to the amount of wages paid to workmen is deleted and substituted by the percentage inserted and extended below, which figure shall be fixed for the currency of the Contract;
- b. Section 2 Materials. The figure of the percentage addition to the cost of materials delivered to site is deleted and substituted by the percentage inserted and extended below, which figure shall be fixed for the currency of the Contract;

Labour

Provide the Provisional Sum of £500
for wages paid to workmen

*Add to the wages paid to workmen%

Materials

Provide the Provisional Sum of £500
for the cost for materials delivered
to site

*Add to the wages paid to workmen %

Plant

Provide the Provisional Sum of £500
for the cost of plant.

*Add the cost of plant delivered to site %

Sub-Total Final Summary £

Percentages to be inserted and extended by the Tenderer

FINAL SUMMARY