

Contract

Methods of Work Execution/contracting

- Direct Purchase
- National Competitive Bidding (NCB)
- International Competitive Bidding (ICB)
- Sealed Quotations
- Works through Users Committee

Direct Purchase

- Expendable or capital goods valuing up to Rs. three lakhs and construction work valuing up to Rs. five lakhs may be directly procured or purchased.
- Construction work under this section cannot be directly procured from the same individual firm, company or organization more than one time in a fiscal Year

National Competitive Bidding

- NCB is also called as local competitive bidding. In this process, all the eligible bidders are invited to participate in the bidding.
- For NCB, tender notice is to be published in a national newspaper or a website, for a period of 30 days.
- NCB is necessary for the public entity if estimated amount of work is greater than 20 lakhs or estimated goods are greater than 10 lakhs.
- Bidding may be submitted in a single or joint venture (maximum three and not less than 25% share).

International Competitive Bidding (ICB)

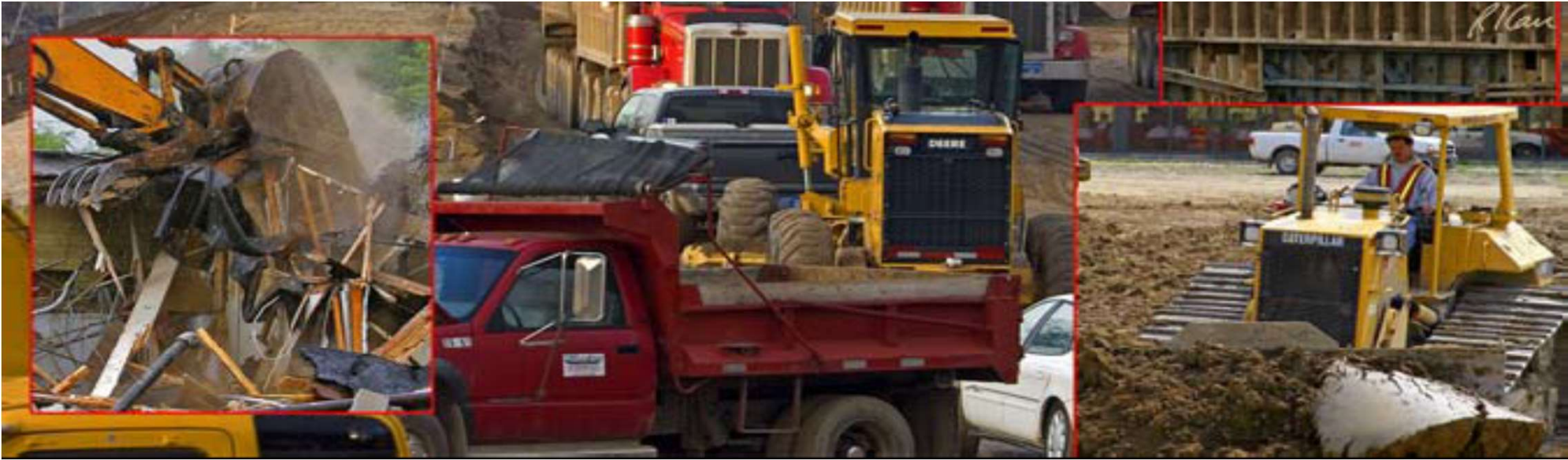
- If the amount of work is big and national/domestic contractors cannot perform the job, eligible bidders are invited from all over the world, and then this type of bidding is known as International Competitive Bidding.
- In this process, tender notice is published for a period of 45 days in the national English newspaper or International journal/website.

Sealed Quotations

- Goods and other services valuing up to one million Rupees and construction works estimate up to two million may be procured by inviting a sealed quotation.
- In this process, 15 days' notice is published in the national or local newspaper.
- The sealed quotation, once submitted, cannot be withdrawn or amended.
- The lowest evaluated sealed quotation falling within the cost estimate after fulfilling the terms and conditions shall have to be approved.

Works through Users Committee

- If the economy, quality or sustainability is increased in having a construction work carried out or obtaining services related from the user's committee or to have the beneficiary community involved, such work may be caused to be carried by or such service may be obtained from a users' committee as prescribed.
- Cost estimate up to sixty lakhs Rupees may be carried out or obtained from users committee.



Contract is an **agreement** made between **two or more** than two **parties** to do or not do any act or business, which can be **enforceable by law**.

(Contract Act 2056)

Engineering Contracts

- An ***Engineering Contract*** is a mutual agreement negotiated between two parties for the purpose of undertaking, on a commercial basis, certain clearly specified engineering work.
- In construction Industry “Project is sold before it is made”. In other words, the facility is purchased before it is “manufactured” based on a set of drawings and work descriptors.
- The end item requires the purchaser to coordinate many entities to include designer(s), contractor(s), specialty subcontractor(s) and vendors.

Contract

- Major parties in a construction project

- ◆ Client
- ◆ Engineer
(Consultant)
- ◆ Contractor

Essentials of a valid contract



1. Offer and acceptance

There must be an **offer** from a party to do or not to do any business and the same shall be **accepted** by the other.

2. Free consent

The agreement made between the parties should be freely made, without any coercion, or pressure.

3. Lawful purpose

- The purpose of the contract should be legal.

4. Legal consideration

The benefit of the contract should be to both the parties and should be legal.

5. Capacity to contract (Competent party)

- Persons having age 16 years or above
- Persons under own control



6. Possibility of performance

The task should be such which can be possible to complete.



7. Certainty

The task should be certain:

Time (duration)

Cost

Size (volume)

and others

8. Writing and registration

In general, contract shall be in written and in most cases registration is required.

Therefore:

**All contracts are agreement but
all agreements are not contract.**

Functions of Contract

- ▶ It defines the normal performance required from each party, variance in certain circumstances should be within the framework of the contract.
- ▶ It defines the share of technical, commercial and economic risks between the parties,
- ▶ It identifies most of the predictable problems, which may arise during the contract and prescribe machinery and procedures for dealing with them if they arise.

Contract provides a clear division of

- ▶ Responsibilities
- ▶ Legal obligations
- ▶ risk allocation
- ▶ payment regime

Why contracts?

- To make an agreement law-enforceable.
- To record the terms of an agreement.
- To specify what the contractor must do and what the owner must pay.
- To specify what will be done if either party fails to perform.
- To specify the quantity and the quality of work to be done.
- To specify the time frame within which the work is to be completed and payment made.
- To specify the means, method, terms and time of payment
- To identify the parties to the agreement.
- To identify the official agents or representatives of parties to the agreement and define their authority and responsibility.
- To set out in advance the courses of action that will be taken in different possible situations.
- To define words and establish common meanings.
- To specify what is and what is not included in contract.
- To specify how contract will be terminated.
- To specify the responsibilities of the parties not just to each other, but to third parties such as: the government, the community in which the work is to be done, the workers, subcontractors, materials suppliers, unions, etc.

Factors to be considered in preparing a contract

1. The contract must be fair -the owner wants to have his project constructed. & the contractor wants a profit.
2. The contract must be clear -the intention of the contract is to communicate precise information to people who must act on it.
3. Contract language must be consistent
4. No repetition - say it once - say it in the proper place - let it be.
5. Use each part of the contract for its proper purpose
6. Contract information must be retrievable
7. Use foresight - try to foresee any possible area of confusion and clear them up in advance.
8. If you want it, get it in the contract

Voidable Contract

As per contract act the following contracts are voidable, i.e. if the party desire to make it void.

- Forceful contract
- Entered due to undue influence
- Contract involving fraud or mis-statement.

Void Contract

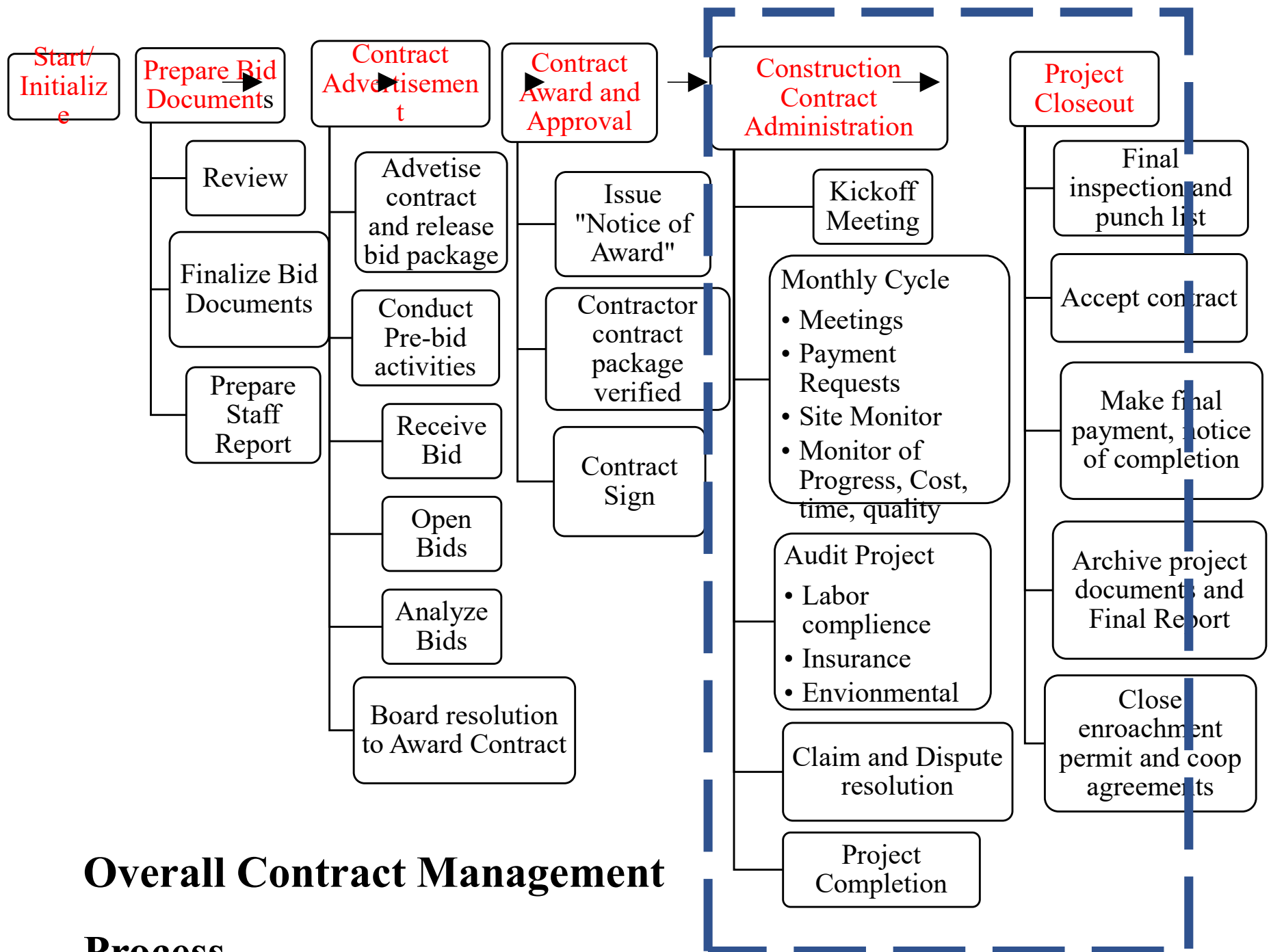
As per contract act the following contracts become null and void.

- Contrary to statutory law.
- Ambiguous, Vague and unlimited contract
- No possibility of performance
- Contrary to public policy and welfare.
- Signed by incompetent parties.

Discussion

Rabi wishes to have an extension built onto his house and asks Kamal, a local contractor, to provide a quotation. He gave Kamal a sketch pal showing where he thought there was a drain that would have to be diverted. Kamal sent him an "estimate" of Rs. 30,00,000 for the work and he replied, "accepting quotation".

Kamal started work a week later and soon found that the drain was in much more difficult position and would cost Rs. 3,00,000 more than he had thought to divert. Kamal told Rabi that because of the mistake, he was entitled to an extra payment and that it was impossible for him to complete the work without going bankrupt unless Rabi paid him the Rs. 3,00,000 extra. Rabi does not think that Kamal is entitled to the extra payment but because he is desperate to get the work finished before his son's wedding a month later he agrees to make the payment to "Get the work finished early". Kamal finishe the work ahead of schedule but Rabi refuses to pay extra Rs. 3,00,000. Advise Kamal.



Overall Contract Management Process

<u>Construction</u>	<u>Post Construction</u>
Kick-off meeting	Initial Inspection
Quality plan/inspection/control	Punch list
Labor Compliance	Final Inspection
Progress payments	Process final payment
Change order finalization	Project acceptance/Taking over
Material source and testing	Documents archive
Schedules	Project audit
Submittals reviews	Project Reviews
Health and Safety	
Claims	
Environmental monitoring	

S. No.	Contract Administration Risks	Example
1.	Definition of acceptance	Delay due to non-acceptance of the final product.
2.	Wrong product	Wrong product shipping by the vendor in spite of the correct order made
3.	Cost	Excessive escalation
4.	Delays	Delay due to verification, approval, contractor internal problems, vendor and sub-contractor
5.	Change Order	Change in scope of work after the contract award
6.	Conflict	Problem on mutual understanding, disagreement that can't be easily resolved
7.	Poor performance	Low level of expected performance in quality
8.	Risk of Failure/termination	Deploy new equipment, new technology requires, new vendor, lack of experience
9.	Partnering& Subcontracting	Dis-satisfaction between the JV partner
10.	Others	Due to limited vendor for the specific items or works

Contract Administration Functions	Modules	Required Documents
Meetings	Kickoff meeting	Agenda, minutes
	Weekly	Agenda, minutes
	Monthly	Agenda, minutes
	Management	Agenda, minutes
Submittals	Pre-construction	Insurance policy, methodologies, organization chart, working schedule, mobilization schedule
	Construction submittals	Test reports, material sources identification and approval, test formats, other standard formats, progress report formats, bill formats
	Closeout Submittals	Warranty and Guarantee documents, punch-list completion, taking over letter etc.
	Submittal review	All submittals
	Record Keeping	All the documents including email, samples etc.
Interpretation and Modifications	Interpreting contract documents	Drawings, agreement documents, specifications
	Contract modifications	Drawings, change in scope
	Substitution	Works, materials, technique, workmanship
	Field engineering	Surveying & layout data, complete set of drawings

Executing the Work	Scheduling	Master schedule, weekly, monthly, cash flow chart, progress tracking records
	Communication	Organization chart with hierarchical order, communication procedures and channels, duration to response
	Material Handling and Storage	Material receive records, stockpile records, daily consumption records,
	Examination and verification	Standard format for inspection at the site/offsite
	Testing & inspection	Standard test formats, Testing records, instruction of acceptance /rejection
	Record keeping	All the documents including email, samples etc.
Quality Assurance/ Quality control	Quality assurance plan	Quality assurance plan, flowcharts, Recapitulative test schedule, list of lab staffs, sources of materials
	Quality control processes	non-conformity detection and verification documents
	Quality check	Standard specifications, field test reports, inspection reports
Measurement and Payment	Measurement	Measurement book, BOQ
	Progress payment	Bill/voucher, approved change order, support drawings, records of extra works and other supporting documents
	Retention/ Mobilization repayment	Contract documents, bill, mobilization receipt
	Withholding payment	Letter stating the causes
	Liens	Enquiry/ non-acceptance letter
	Liquidated damages/Penalty/Bonus	Working schedule, contract documents, time of completion records
		Final Bill/voucher, approved change orders, support

Claims and Disputes	Claim & Dispute entitlement	Notice to the either parties
	Claim documents filed	Burden of Proof, Basis of claim documents, Substantiation claim
	Resolving Claim & Disputes	Mutual understanding for the dispute resolution by Adjudication/Arbitration/Litigation, All the documents in chronological order
Health and Safety	Safety Plan	Contractor Site Safety Management Plan (CSSMP), Emergency action plan, Public safety management plan, Transport Management Plan
	Safety Control	Safety Training records, Orientation (Pre-work & Pre-job), Checklist and inspection reports, instructions
	Accident Reporting	Injury register, Photographs, Accident Report
Project Closeout	Punch list	List of nonconformities of the works, inspection record
	Closeout meeting/closeout	Agenda, minutes, successful completion report of the punch list, Certificate of completion, Release of the Guarantees, Letter of commencing of the DLP
	Post construction services	Warranty, Guarantee documents, services contact list, maintenance manuals, operation manuals
	Document Archive	All the documents of the contract administration throughout the project
	Taking over	Request letter, Taking Over certificate

Types of Contract

The method of classification of Contracts are

- *The method of payment for the work*
- *The method by which the contractor is selected.*
- *The method by which the responsibility is allocated*

Classification by the method of payment for the work

- *Lump sum contracts*
- *Schedule of rates or unit-price contracts*
- *Cost plus contracts*
- *Sometimes, Part Lump Sum and Part Unit-Price Contract*

Classification by the method of selecting the Contractor

- **Competitively Tendered Contracts**
- **Negotiated Contracts with the selected contractors**

Classification by Tech /Administrative Responsibility

- *Traditional*
- *Owner-Builder*
- *Design–Build or Design- Manage (Turn Key)*
- *Build-Own-Operate-Transfer (BOOT)*
- *Construction Management Contract*

Subcontracts

- **Designated Subcontracts**
- **Selected Subcontracts**
- **Nominated Subcontracts**

Performance of Contract

- Types Performance

- Actual
- Attempted

Discharge by mutual Agreement

alternation, rescission, remission, merger, Novation
and waiver

Discharge of Contract by Impossibility

At start and supervening

Discharge by Laps of Time

Discharge by operations of Law

Discharge by Breach of Contract

ACTUAL & ANTICIPATORY

Accord and satisfaction

Remedies for Breach of Contract

- Rescission
- Claim Damages: liquidated, ordinary (consequential & compensatory), special, vindictive & exemplary, nominal, deterioration caused by delay
- Suit upon quantum Meruit: divisible, no intention for gratuitous, work done
- Suit for specific performance;
- Suit for injunction
- Promisee's neglect

. Termination of the Contract

- The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- Fundamental breaches of Contract shall include, but shall not be limited to, the following:
 - (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
 - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
 - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required; and
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **SCC**.
- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 58.1.

- When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 57.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- Notwithstanding the above, the Employer may terminate the Contract for convenience.
- If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

Payment upon Termination

- If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.