

PROCUREMENT STRATEGY OPTIONS

Ref.C/1

8. STANDARD FORM OF CONTRACT

8.1 HKIA Form / HKIS Form

The HKIA Form is the most popular Standard Form of Main Contract in use for Private Clients and is issued under the Sanction of Hong Kong Institute of Architects, the Royal Institution of Chartered Surveyors (Hong Kong Branch) and the Society of Builders, Hong Kong (HKIA Form, in short). There are two versions available : one is the "with quantities" form and the other is the "without quantities" form.

The official names of the latest editions of the two versions are :

- i) Agreement and Schedule of Conditions of Building Contract for use in Hong Kong, Private Edition (With Quantities), Second Edition 1976 (May 1979 Revision); and
- ii) Agreement and Schedule of Conditions of Building Contract for use in Hong Kong, Private Edition (Without Quantities), Second Edition 1976 (April 1998 Revision).

The RICS (HK Branch) in 1986 also issued their Standard Forms (RICS Forms, in short) which are identical in all respects to those of the HKIA Form with the only exception of having the name of the issuing institute being RICS and a slightly different presentation format.

The official names of the latest editions of the "With Quantities" and the "Without Quantities" versions of the RICS Forms are :

- i) Agreement and Schedule of Conditions of Building Contract for use in the Hong Kong Special Administrative Region, Private Edition – With Quantities, First RICS (HK Branch) Edition (1986), First amendments published September 1997, Second amendments published July 1999; and
- ii) Agreement and Schedule of Conditions of Building Contract for use in the Hong Kong Special Administrative Region, Private Edition – Without Quantities, First RICS (HK Branch) Edition (1986), First amendments published September 1997, Second amendments published July 1999.

Although the content for both contract forms are the same, we should check with the Employer and the Architect to see whether there is any preference to use a particular form.

The HKIA Form and RICS (HK) Form normally will be used in conjunction with a set of office Special Conditions of Contract, as contained in the office Standard Documentation.

See later for an outline of the clauses contained under these forms of contract.

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8. STANDARD FORM OF CONTRACT (CONT'D)

8.2 Hong Kong Government Forms

The Hong Kong Government has its own forms of contract for use in government projects, these are :

- i) General Conditions of Contract for Building Works (1999 Edition)
- ii) General Conditions of Contract for Civil Engineering Works (1999 Edition)
- iii) General Conditions of Contract for Electrical and Mechanical Engineering Works (1999 Edition)
- iv) General Conditions of Contract for Design and Build Contracts (1999 Edition)

Except for the design and build form the Conditions contained in the above forms of contract (i.e. Items (i) to (iii)) are generally very similar with one another with the exception of a few clauses.

The main differences between these forms are relating to measurement, basis of contract, interim payments, final accounts and fluctuations due to the different nature of contract procedures. The Electrical and Mechanical Form moreover contains additional provisions relating to design responsibility of the works, off-site storage of equipment, testing, spare parts and operation manual etc. which are applicable to the practical requirements of Electrical and Mechanical works.

Special Conditions need to be drafted to modify these Standard forms and to provide any other requirements which are suitable for the individual projects.

Unlike most other contract forms, there is no Appendix to the Conditions dealing with matters such as liquidated damages, completion dates etc. Instead these matters are dealt with as an appendix to the Form of Tender.

8.3 F.I.D.I.C.

FIDIC is an acronym for Federation Internationale Des Ingenieurs - Conseils (the International Federation of Consulting Engineers). In 1999, FIDIC published the First Edition of a new standard form of contract. The official name of this new standard form is "Conditions of Contract for CONSTRUCTION FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER First Edition 1999".

This form of Contract is for building or engineering works designed by the Employer or by his representative, the Engineer. The works may include some elements of Contractor-designed civil, mechanical, electrical and/or construction works.

This form is recommended for general use where tenders are invited on an international basis. Modifications may be required if the Conditions are to be used in the local building context.

Composition of the Conditions

- i) Part I - Published General Conditions
- ii) Part II - Conditions of Particular Application.

The part II Conditions need to be drafted for each project. Guidelines for the preparation of Part II Conditions are published by FIDIC together with a Guide to the use of FIDIC.

Composition of the Contract Documents Based on F.I.D.I.C.

- i) The Contract Agreement
- ii) The Letter of Acceptance
- iii) The Tender
- iv) Parts I & II of the Conditions
- v) The Specification, Drawings and Bills of Quantities

8. STANDARD FORM OF CONTRACT (CONT'D)

8.3 F.I.D.I.C. (Cont'd)

Features of F.I.D.I.C.

The Contract is administered by the Engineer.

Unlike most contracts, there is no Appendix to the conditions dealing with matters such as damages, completion dates etc. Instead these matters are dealt with as an appendix to the Form of Tender.

Provides for the Contractor to design part of the permanent work if expressly stated.

Insurances are taken out by the Contractor. However, the Part II Guidelines contain details of amendments necessary if the Employer wishes to take out the insurances.

Provides for section 1 possession of the site and phased completion of the Works.

The quantities in the Bill of Materials are the estimated quantities and shall be remeasured.

Provisional sums may be included in the Documents in respect of work to be executed by nominated subcontractors.

Terminology, procedure and key dates under FIDIC are :-

The Letter of Acceptance (of the Contractor's tender) binds the parties contractually.

The Engineer issues to the Contractor not less than 7 days' notice of the Commencement Date. The Commencement Date must be within 42 days after the Contractor receives the Letter of Acceptance.

The Time for Completion stated in the Tender Appendix is calculated from the Commencement Date.

Liquidated Damages become payable if the Contractor fails to meet the Time for Completion or such extended time granted in accordance with the Contract.

When the Works are substantially completed and have passed any prescribed tests on completion, the Contractor gives notice to the Engineer. Within 28 days of the notice, the Engineer issues a Taking-Over Certificate stating the date when the works were substantially completed.

Other FIDIC Standard Forms of Contract published in 1999

i) Conditions of Contract for Plant and Design-Build

It is for the provision of electrical and/or mechanical plant, and for the design and execution of building or engineering works, in accordance with the Employer's requirements.

ii) Conditions of Contract for EPC/Turnkey Projects

It is for the Contractor who carries out all the Engineering, Procurement and Construction (EPC): providing a fully-equipped facility, ready for operation (at the "turn of the key"); for the provision of process or power plant, factory or similar facility, or of infrastructure project or other type of development.

iii) Short Form of Contract

It is for building or engineering works of relatively small capital value. Depending on the type of work and the circumstances, this form may also be suitable for contracts of greater value, particularly for relatively simple or repetitive work or work of short duration.

8. STANDARD FORM OF CONTRACT (CONT'D)

8.4 Minor Works Contract

The RICS (Hong Kong Branch) has published the First Edition of the Standard Form of Contract for Minor Works in late 1992. This is a simple set of Conditions (drafted in English and Chinese Versions) suitable for projects up to a value of HK\$ 5,000,000 (at 1992 prices) for an agreed lump sum, where a Contract Administrator is to be appointed to supervise the contract on the Employer's behalf.

The clauses contained in this Form of Contract are found to be fairly loose which may give rise to unnecessary disputes. Special Conditions are therefore required to be drafted in each occasion to supplement the use of this form of contract which is very time consuming and may be dangerous. Eventually it is found that it may take more time to prepare documents using this Form of Contract than those prepared on the basis of the Office Standard Documentation in conjunction with the HKIA/RICS (with or without quantities) Standard Forms of Building Contract. It is therefore decided that unless with the specific consent of the Director-in-charge, the use of this minor work form of contract in this office is discouraged.

In particular, this Form of Contract should not be used where any of the following circumstances prevail :

- i) The Employer wishes to nominate sub-contractors or suppliers. Although it may be permissible to name a person or a company in tender documents for instructions on the expenditure of a provisional sum, there are no provisions in this Form of Contract for dealing with the consequences of what is in effect the nomination of a sub-contractor;
- ii) Where the duration of the Contract is such that full labour and materials fluctuations are required, or where the works are of a complex nature, or involve complex services, or require more than a short period of time for their execution;
- iii) Where it is envisaged that partial possession of the Works may be required by the Employer;
- iv) Where a large proportion of the value of the Works may be tied up in the manufacture or supply of specialist goods for which the Contractor may be entitled to expect a stage payment. There is no provision in this Form of Contract for payment for unfixed materials and goods off site;
- v) This Form of Contract is not intended for design and build contracts.

This Form of Contract should be completed in either the English language text or Chinese language text but not both.

8. STANDARD FORM OF CONTRACT (CONT'D)

8.5 Sub-Contract Forms Generally

The Standard Form of Nominated Sub-Contract to be used in conjunction with the HKIA/RICS Main Form is the Sub-Contract Form issued under the sanction and approved by the HKIA, RICS (HK Branch), and the Society of Builders, Hong Kong (1968 Edition) (commonly term as the 'Green Form,') and all the conditions contained therein are tied in with the Form of Main Contract.

There is also a government form of Nominated Sub-Contract (1988 Edition) to be used in conjunction with the Government Main Contract Forms for Building Works.

Conditions contained in Domestic Sub-Contract forms vary a lot with different Main Contracts and we normally would not be involved in these forms of Sub-Contracts. However there may be some cases in which a Main Contractor proposes his own Form of Sub-Contract for entering into a Nominated Sub-Contract with his Nominated Sub-Contractor after nomination. The Nominated Sub-Contractor in fact can refuse to use this proposed form which normally includes more unfavourable conditions for the Sub-Contractor if his tender is not based on this proposed form.

8.6 Supply Contract Form Generally

Most suppliers have their own conditions of sales which are not in accordance with the standard requirements relating to Nominated Sub-Contractors under the Standard Forms of Main Contract.

A Standard Form of Tender has been prepared under sanction of the Hong Kong Institute of Architects, the RICS (HK Branch) and the Society of Builders, Hong Kong for use in conjunction with HKIA Standard Form of Main Contract.

The government form of Nominated Sub-Contract (1988 Edition) is also intended to be used for Supply Contracts.