

Schedule 3 - Open Book Policy, Cost Management and Payment

3.1 Specific Definition of Terms

3.1.1 Definition of Cost

3.1.1.1 "Cost"

means the cost properly and reasonably incurred (as that term is defined in 3.1.1.2 (iii)) by the Contractor in or in connection with the carrying out of the Works to the extent that such Cost is either further defined in 3.1.1.2 (i) to (ii) below or otherwise recoverable pursuant to any express term of the Contract but excluding in any case any item of cost included within the Fee or the Adjusted Fee.

3.1.1.2

- (i) Cost shall, subject to the proviso below, be deemed to exclude:
- (a) any cost incurred in consequence of any breach of the Contract by the Contractor (or by any Subcontractor or other parties for whom the Contractor is responsible), which shall be deemed to include for avoidance of doubt: (i) cost incurred before or after completion of the relevant Section in the rectification, removal or replacement of any defective work; and (ii) cost incurred in any attempt to recover delay resulting from a cause which does not entitle the Contractor to an extension of any Time for Completion or where the Employer has not expressly instructed such attempted recovery; and/or
 - (b) any cost in respect of any other risk or circumstance for which neither this Schedule nor the Contract expressly provide for the payment of Cost),
 - (c) any cost in excess of the TC/STCs in respect of delays for which the Contractor is not entitled to extension of time under the Contract ;
 - (d) excessive wastage of materials including but not limited to theft, damage or over-ordering of materials, which shall be deemed to include wastage of materials in excess of the percentages and subject to the conditions provided for in the table below;
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- (e) off-site entertainment of staff or suppliers and sub-contractors and the like of a potential or engaged nature in excess of the budget amount shown in Schedule 2;
 - (f) alcohol and tobacco products, other than for the use of and within the budget amount described in (f) above.

Comment [AE1]: This is covered by (C) above

Comment [J2]: Wastage calcs being prepared by Hanscomb

Comment [AE3]: Accepted in Principle subject to review and agreement on the thable

PROVIDED THAT such exclusion shall not disentitle the Contractor to the reimbursement of Cost in accordance with the Contract in respect of reasonable allowances made in respect of the items described in paragraphs (a) to (g) above within any lump sum or unit rate Subcontract awarded in accordance with the Contract or in respect of the amounts of Cost described in (ii) below.

(ii) the Contractor shall be entitled to have certified for payment as Cost in each Interim Payment Certificate costs arising from the matters referred to in (i)(a) and (i)(b) above plus the Adjusted Fee thereon to the extent that:

(a) the aggregate amount of such Cost plus Adjusted Fee thereon as so certified does not exceed the value of the retention deducted (or bonded in lieu of such deduction) from the payment which is the subject of that certificate; and

(b) the total amount paid or certified from time to time in respect of all such Costs plus Adjusted Fee (in the aggregate) does not exceed the aggregate amount of retention (or bonds issues in lieu of retention) held by the Employer, net of any deductions from such retention or claims on such bonds which the Employer has made in accordance with the Contract.

(iii) for the purposes of Clause 14 of the Conditions and otherwise an item of Cost shall be deemed to be incurred (and thus eligible for inclusion in an application for payment) only after the following conditions have been fulfilled:

(a) in the case of Materials and Plant where the relevant items have been incorporated in the Permanent Works or are shipped or delivered where either Sub-Clause 14.5 (b) or (c) of the Conditions respectively apply (in which latter case the percentages of Cost payable shall be as set out in Sub-Clause 14.5); and

(b) in the case of Materials or Plant where the Contractor can establish that unencumbered title to the relevant items will vest in the Employer upon payment (including, without limitation, by demonstrating compliance with Sub-Clause 4.4(d) of the Conditions in relation to the relevant Subcontractor) and the other requirements (where applicable) of Sub-Clause 14.5 of the Conditions have been satisfied; and

(c) in the case of Materials, Plant and all other items (subject to 3.4.3.2) that the Contractor can establish that either: (in the case of Cost which comprises payments to Subcontractors or other external parties) the Contractor has already made the relevant payment to the Subcontractor or party or that the Contractor is liable to make the same within 90 days after the submission of the relevant payment application to the Engineer; or in the case of Cost directly and internally incurred by the Contractor, the said Cost is substantiated by timesheets, payrolls or other data reasonably acceptable to the Engineer in accordance with generally accepted accounting principles.

Where a payment of Cost is made by the Employer in reliance on the Contractor's liability to pay within 90 days as set out in (c) above and the Contractor subsequently fails to establish that any such payment has been made within such period, the Engineer shall be entitled to deduct from any certificate or the Employer from any payment the amount of any

such payment (plus the Fee or Adjusted Fee paid thereon) until such time as the Contractor can substantiate as aforesaid that it has discharged the relevant liability to pay.

3.1.1.3 "Costs" are classified into the following four categories:

(a) Prime Cost: is the Contractor's Cost excluding Preliminaries, Bonds and Insurance.

(b) Preliminaries: are the following items of Cost:

- a. Site overheads inclusive of help desk agreements providing on standby basis services related and /or connected with the contractor's performance of the works.
- b. Quality Control of the Works including but not limited to all samples, test, reinstatements, making good, analysis, reporting, etc
- c. Site office accommodation, any premises exclusively dedicated to the Contract whose use has been approved by the Employer, worker housing, kitchen and kitchen equipment, furniture, equipment, telephones, fax, internet connection, stationery etc.
- d. Site sign boards.
- e. Site Security and surveillance.
- f. Provision of computers, computer software, modems, printers, photocopying.
- g. Mock-ups and samples as required by the Engineer.
- h. Fees, rates and all other charges properly paid by the Contractor to Local and other Authorities.
- i. Payment of consumption charges in respect of electricity, gas (if any), water supplies for the Temporary Works including those for testing and commissioning of the Permanent Works.
- j. Use and waste of small tools, protective clothing and office equipment.
- k. Photographs, videos, etc of site progress. All costs in relation to Contactor's progress reports to the Engineer.
- l. Courier services.
- m. Site directional signage and sign boards
- n. Provision of refreshments during meetings held at the Site and Site entertainment costs.
- o. The cost of compliance with provisions relating to Health & Safety in accordance with all statutory requirements and of any statutory re-enactment thereof including the provision of welfare facilities and equipment.
- p. Travelling costs and accommodation expenses incurred in visiting premises of Contractor's sub-contractors or suppliers and visiting Local Authorities in relation to the Works.
- q. Mechanical plant and power operated tools.
- r. Scaffolding and scaffold boards including reasonable losses thereof where hired.
- s. Non-mechanical plant including hand tools; including their repair and sharpening.
- t. Transport including collection and disposal of rubbish and charges for tips and transportation of plant.
- u. Tarpaulins and dust sheets.
- v. Temporary roadways, shoring, planking and strutting, centring, hoardings (to the extent applicable), temporary fans, temporary fencings, barriers, footways, temporary partitions or the like.
- w. Fuel and consumables for plant and power-operated tools.
- x. Fuel and equipment for drying out the Project.

Comment [J4]: Could this be included in the Fee?

Comment [AE5]: This is cost and therefore cannot be included in the Fee

Comment [J6]: To be reviewed with RR. Could this be included in the Fee?

- y. Temporary buildings.
- z. Site welfare accommodation, protective clothing and other provisions for the welfare of persons engaged on the work and authorised visitors.
- aa. Temporary plumbing, drainage, mechanical, electrical and gas installations for Contractor's facilities.
- bb. The provision of protection for the Works.
- cc. The provision of health and safety measures necessary to comply with the Statutory Requirements and Best International Practice.
- dd. Erection, dismantling and maintenance of mechanical plant.
- ee. Builders clean in progress and on completion of the Works or part thereof as required by the Engineer
- ff. Regular cleaning and maintenance of all site accommodation and temporary facilities
- gg. Mechanical plant spares and consumables
- hh. Contractor's site staff salaries and eligible expenses
- ii. All Contractor's site management costs and expenses, including all Contractor's construction management staff related costs.
- jj. Temporary waste and sewage treatment plant for Contractor's facilities
- kk. Site running costs
- ll. Cost of food including canteen and kitchen facility
- mm. Mobilisation and de-mobilisation costs in relation to site facilities, equipment and vehicles
- nn. Vehicles, pick-ups, lorries
- oo. travel expenses and cost of visas and permits for staff and labour
- pp. rental equipment
- qq. temporary power generators and fuel
- rr. legal, auditors and other similar fees

The total of the amounts set out in Schedule 2 in respect of each STC do not include Preliminaries and Bond and Insurance Costs which are payable separately regardless of their particular effect in any or all STCs.

Comment [J7]: So how will Cost Planning be presented for each STC? Prelims to be included in separate chapter?

- (c) Bonds and Insurance: Contractor's costs for issuing Bonds and his portion of Insurance costs, which may include the cost of any difference in cover insurance purchased by the Contractor in relation to the insurances referred to in Sub-Clause 18.2 of the Conditions. The Bonds and Insurance amount included in the TC, as described in Schedule 2, is, subject to Clause 13 of the Conditions, the target amount payable by the Employer to the Contractor pursuant to the Contract for all Bonds and Insurance. No Fee or Adjusted Fee is payable in connection with such Costs.

3.1.2 Definition of Fee

3.1.2.1 "Fee" shall have the meaning defined under Sub-Clause 1.1 of the Conditions.

3.1.2.2 The following items are covered by the "Fee":

- (a) Head Office Overheads: are the costs of running the Contractor's business as a whole and not attributable to a particular contract. It includes but is not limited to: costs related to the premises of business and utilities costs; office equipment, machines and consumables; head office staff and director's salaries and pension fund contributions; cost of travelling

and expenses thereof including those related to head office staff or directors visiting the Works; marketing and advertising costs; business development related costs; etcetera. The term "head office" is deemed to include the Contractor's registered office or offices and any other premises use by the Contractor in conducting his business other than the site office for the Works and any premises exclusively dedicated to the Contract whose use has been approved by the Employer.

- (b) Contractor's Profit and Risk: means the Contractor's gross profit in conducting his business. It includes the Contractor's own assessed risk cover, including in particular any risk for which a right to the payment of Cost and/or an increase in the TC or any STC is not otherwise expressly provided in the Contract. It also includes all Contractor's tax liabilities except those specifically stated in Sub-Clause 14.1(b) (i) and (ii) of the Conditions and employment or payroll taxes included in payroll costs.

3.1.3 Definition of Adjusted Fee

- 3.1.3.1 "Adjusted Fee" shall have the meaning defined in Sub-Clause 1.1 of the Conditions and is deemed to cover the same items as Fee, as defined under 3.1.2.2.
- 3.1.3.2 The "Adjusted Fee" is to be applied to items of cost in-lieu of the "Fee", whenever the Contract makes it applicable.

3.2 Open Book Policy

- 3.2.1 The Contractor undertakes to deliver the Works with full and unrestricted access to all their cost control records, procurement records (including attendance at any meetings with and without suppliers, sub-contractors and the like) and purchase orders related with the Works, as the Engineer and Employer might at all times require. All of the above documents shall be retained on Site and removed only after completion of the Project and upon approval of the Employer to do so.
- 3.2.2 The Contractor shall provide to the Engineer the procedures for its cost accounting system, including sample reports. The Engineer may reasonably require modifications to said system and reports in order to improve the transparency of costs. The Contractor shall be obliged to seek Engineer's or Employer's advance approval to proceed with any particular procurement provided of course that the Employer/Engineer should act reasonably and in case it fails to act (by accepting or rejecting electronically particular procurement proposed by the Contractor) within 7 days from the date of the approval request from the Contractor, the Employer's/Engineer's consent shall be deemed granted.

3.3 Design and Cost Management Processes

- 3.3.1 The Employer will prepare and deliver to the Contractor the Employer's Requirements Development Documents (if any) for each Section not later than the dates provided for in Schedule 5 part 2 for this purpose. Upon receipt of any Employer's Requirements Development Documents, the Contractor will commence the Contractor's Design Development.
- 3.3.2 Without prejudice to their respective rights and obligations as set out in the Contract, the Parties shall work diligently, collaboratively and in good faith with the shared objective of ensuring that the net effect of activities carried out during the Project shall be to optimise Costs

and in particular to maintain the aggregate of Costs and Fee or Adjusted Fee within the TC and applicable STCs. Notwithstanding the foregoing, the Parties acknowledge and agree that should the aggregate of Costs, Fee and Adjusted Fee deviate from the applicable STCs or TC then the Employer shall, as a result of joint value engineering exercises and on the basis of reasonable recommendations of the Contractor which will take into consideration the necessity of not decreasing the Employer's revenue generating elements of the Project, issue Variations in accordance with Clause 13 of the COC and endeavour to ensure that the Cost plus Fee and Adjusted Fee for the particular Section will be equal or lower than the amount provided for in Schedule 2 for the respective STC or TC.

- 3.3.3 The Contractor shall prepare the Design of each Section in full compliance with the Contract. The Contractor will submit to the Employer the Design (Concept, Preliminary, Detailed, Construction) for each Section within the times allocated to such task in the Contract.
- 3.3.4 The Preliminary Design stages of Design Development shall include an updated Cost Plan of the TC and relevant STC broken down by building or structure prepared in accordance with the New Rules of Measurement Edition 1 (February 2009) as published by the Royal Institution of Chartered Surveyors (RICS), or equal and approved. The Detailed Design and Construction Drawings stages of Design Development shall include an updated Cost Plan of the TC and relevant STC broken down by building or structure prepared in accordance with the Principles of Measurement (International, June 1979) as published by the Royal Institution of Chartered Surveyors (RICS), or equal and approved, except for Infrastructure Works which shall be prepared in accordance with CESMM3 as published by the Institution of Civil Engineers. The method of cost planning must be approved by the Engineer prior to preparation of the Cost Plan by the Contractor.

The form of Cost Plan at each stage of Design shall be:

- Concept Design: Elemental Cost Analyses prepared by the Employer
- Preliminary Design: Bills of Approximate Quantities (BAQ)
- Detailed Design: Detailed Bills of Quantities (BQ)
- Construction Drawings: Final Bills of Quantities (BQ)

Each stage of cost planning, except Concept Design, shall be fully priced by the Contractor and submitted to the Engineer for information only.

With respect to BAQs and BQs the unit rates shall cover Prime Cost only and these Bills shall include a chapter for Preliminaries, which shall also be priced by the Contractor. These priced Bills shall be accompanied by all cost calculations and quotations from suppliers or sub-contractors as might be required by the Engineer.

- 3.3.5 The completed Concept and Preliminary Designs shall be subject to the review and approval of the Engineer prior to the design progressing further.
- 3.3.6 If, in the opinion of the Contractor, at any time during the Project, it may not be possible to deliver a Section or Sections in accordance with the Contract and within the STC or TC, the Contractor shall notify the Employer and the Engineer accordingly. Such notification must be accompanied by a Cost Plan and the Contractor's detailed analysis and particulars of the variances between the Contractor's Cost Plan and the STC/TC. The Contractor, in conjunction with the Engineer and Employer, shall make every effort to investigate and propose measures to bring the Cost Plan within the STC/TC, through value engineering, with the result of such

Comment [J8]: There is no reason for us to agree a revised TC and STCs at this point. Para 3.3.6 will kick in and we will attempt to bring the cost back in line. If we cannot then Variations will be issued.

measures to be a Cost Plan equal to or lower than the STC/TC. Should the value engineering exercise fail to fully mitigate the excess, then the STC and the TC shall be increased by the amount of the unmitigated excess.

- 3.3.7 Without prejudice to their respective rights and obligations as set out in the Contract, the Parties shall work diligently, collaboratively and in good faith with the shared objective of mitigating the exposure to changes in currency conversion rates, including but not limited to approval of Contractor's subcontracting and other procurement arrangements.
- 3.3.8 Without prejudice to their respective rights and obligations as set out in the Contract, the Parties shall work diligently, collaboratively and in good faith with the shared objective of mitigating the consequences to the performance of the Works caused by Unforeseeable site conditions, such measures to include (but not be limited to):
- (a) use of acceleration measures and/or flexibility as to the locations of the buildings;
 - (b) seeking alternative remedies from the Government whether under the Concession Agreement or otherwise; and
 - (c) seeking alternative technical solutions with respect to the performance of the Works.

3.4 Payment

- 3.4.1 The Contractor shall prepare a forecast cash flow, in a format to be approved by the Engineer, based upon the programme for each Section and the STC for each Section. The forecast cash flow is to be updated by agreement with the Engineer at every revision to a Section's programme (and at the time of any agreement or determination that the STC and TC is to be increased), and shall be reviewed and resubmitted by the Contractor at least every three calendar months. On Contract Effective Date, the forecast cash-flow is that contained in Schedule 16.
- 3.4.2 The Contractor's payments pursuant to Sub-Clause 14.7 of the Conditions shall be subject to the maximum amount specified in the forecast cash flow set out in Schedule 16 (as amended from time to time in accordance with 3.4.1).

3.4.3 Interim Payment Certificates

- 3.4.3.1 Prime Cost and Preliminaries: will be certified for payment by the Engineer against proof of cost incurred (as defined above) on a monthly basis.

3.4.3.2 Fee

Fee will be paid in accordance with the Contract on the amount of Cost payable in each monthly certificate, except for those Costs to which the Adjusted Fee is applicable, and always within the limits of the TC.

3.4.3.3 Adjusted Fee

Adjusted Fee will be paid in accordance with the Contract on the amount of Cost payable in each monthly certificate to which Adjusted Fee is applicable under the provisions of 3.1.3.2 of this Schedule.

3.4.3.4 Tax, Duties & Levies, Bonds and Insurance

To the extent that the Contractor is entitled to the above items pursuant to the Contract, they will be included in payment certificates in accordance with the Contract.

3.4.3.5 Costs incurred in a currency other than US \$

Costs incurred in a currency other than US \$ will be converted, prior to inclusion in any monthly certificate, at the conversion rate as at date incurred, as defined above.

3.5 Cost Reporting

3.5.1 The Contractor shall submit a monthly cost report including, but not limited to, the following:

- Cost Management
- Value Engineering
- Payment
- Variations, actual and anticipated, if any
- Claims, actual and anticipated, if any
- Cash-flow
- Forecast final accounts for each section

3.5.2 The cost report is to provide the Employer and the Engineer with a monthly status of the project costs, analysis of risks, notification of claims if any, report of value engineering proposals and a register of variations, if any.

3.5.3 The cost report is to be issued by the Contractor within 5 days from the last day of the month being reported on, and in a format to be previously approved by the Engineer and Employer.

3.6 Competitive Tendering

3.6.1 The Contractor will submit a Tender & Procurement Protocol to the Engineer for review and approval, within four months from Effective Date. This Protocol will include templates of tender and procurement documents and procedures for each process.

3.6.2 Tenders will be invited directly by the Contractor, and tenders should be returned to the Contractor. All communication with the tenderers shall be in writing and all such communication shall be available to the Engineer. The Contractor will give prior notice of any tender opening to the Employer, who may attend in person or cause the Engineer to attend on his behalf.

3.6.3 The Contractor will then review the tenders received technically, commercially and contractually and report the findings, which shall be available to the Engineer.

3.6.4 The Engineer will be given the opportunity to attend any meetings with the tenderers and all correspondence to and from the tenderers shall be available to the Engineer. Once

Comment [AE9]: In view of the fact that the Engineer or the Employer will from now on sign every expenditure of the Contractor before it is made there is no need for a competitive tendering procedure which will do nothing else but increase cost and delay works.

Comment [J10]: I disagree that it should be deleted entirely. It is important that some form of protocol exists and that it is submitted for review and approval.

negotiations with the tenderers have been completed the Contractor shall prepare a detailed final tender evaluation report and final recommendation.

3.7 Risk

The Contractor will submit a Risk Analysis to the Engineer within one month of the Effective Date of the Contract in relation to all Project Risks to which the Contractor may be exposed. Format and content to be approved by the Engineer prior to submission. This document shall be reviewed and issued to the Engineer each month for comment.

