

calendar days of the Servicing Agency asking the Procuring Agency's Representative for a decision thereto after fully submitting all supporting information. If the Servicing Agency has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

Clause 27: RIGHT TO MAKE/INSTRUCT VARIATIONS

27.1 The Procuring Agency's Representative with the prior approval of the Procuring Agency may instruct Variations, up to a maximum cumulative amount of ten percent (10%) of the original contract cost.

27.2 Variations shall be valued in the following order:

- a) At a lump sum price agreed between the parties;
- b) where appropriate, at rates in this Contract;
- c) in the absence of appropriate rates, the rates in this Contract shall be used as the basis for valuation or based on the discretion of the Procuring Entity;
- d) at appropriate new rates, equal to or lower than current industry rates and to be agreed upon by both parties and approved by the Head of the Procuring Agency.

Clause 28: SERVICING AGENCY'S RIGHT TO CLAIM

If the Servicing Agency incurs cost as a result of any of the events under GCC Clause 13, the Servicing Agency shall be entitled to the amount of such cost. If as a result of any of the said events, it is necessary to change the Works which shall be dealt with as a Variation.

Clause 29: DAYWORKS

29.1 Subject to GCC Clause 43 on Variation Order, and if applicable as indicated in the SCC, the Dayworks rates in the Servicing Agency's bid shall be used for small additional amounts of work only when the Procuring Agency's Representative has given written instructions in advance for additional work to be paid for in that way.

29.2 All work to be paid for as Dayworks shall be recorded by the Servicing Agency on forms approved by the Procuring Agency's Representative. Each completed form shall be verified and signed by the Procuring Agency's Representative within two days of the work being done.

29.3 The Servicing Agency shall be paid for Dayworks subject to obtaining signed Dayworks forms.

Clause 30: EARLY WARNING

30.1 The Servicing Agency shall warn the Procuring Agency's Representative at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract



Price, or delay the execution of the Works. The Procuring Agency's Representative may require the Servicing Agency to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Servicing Agency as soon as reasonably possible.

- 30.2 The Servicing Agency shall cooperate with the Procuring Agency's Representative in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Procuring Agency's Representative.

Clause 31: **PROGRAM OF WORK**

- 31.1 Within the time stated in the SCC, the Servicing Agency shall submit to the Procuring Agency's Representative for approval a Program of Work showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 31.2 An update of the Program of Work shall show the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 31.3 The Servicing Agency shall submit to the Procuring Agency's Representative for approval an updated Program of Work at intervals no longer than the period stated in the SCC. If the Servicing Agency does not submit an updated Program of Work within this period, the Procuring Agency's Representative may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program of Work has been submitted.
- 31.4 The Procuring Agency Representative's approval of the Program of Work shall not alter the Servicing Agency's obligations. The Servicing Agency may revise the Program of Work and submit it to the Procuring Agency's Representative again at any time. A revised Program of Work shall show the effect of any approved Variations.
- 31.5 When the Program of Work is updated, the Servicing Agency shall provide the Procuring Agency's Representative with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 31.6 All Variations shall be included in updated Program of Work produced by the Servicing Agency.

Clause 32: **MANAGEMENT CONFERENCES**

- 32.1 Either the Procuring Agency's Representative or the Servicing Agency may require the other to attend a Management Conference. The Management Conference shall review the plans for remaining work and deal with matters raised in accordance with the early warning procedure.
- 32.2 The Procuring Agency's Representative shall record the business of

Handwritten signature and initials in the right margin.

Management Conferences and provide copies of the record to those attending the Conference and to the Procuring Agency. The responsibility of the parties for actions to be taken shall be decided by the Procuring Agency's Representative either at the Management Conference or after the Management Conference and stated in writing to all who attended the Conference.

Clause 33: BILL OF QUANTITIES

- 33.1 The Bill of Quantities shall contain items of work for the construction, installation, testing, and commissioning of work to be done by the Servicing Agency.
- 33.2 The Bill of Quantities is used to calculate the Contract Price. The Servicing Agency is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 33.3 If the final quantity of any work done differs from the quantity in the Bill of Quantities for the particular item and is not more than twenty five percent (25%) of the original quantity, provided the aggregate changes for all items do not exceed ten percent (10%) of the Contract price, the Procuring Agency's Representative shall make the necessary adjustments to allow for the changes subject to applicable laws, rules, and regulations.
- 33.4 If requested by the Procuring Agency's Representative, the Servicing Agency shall provide the Procuring Agency's Representative with a detailed cost breakdown of any rate in the Bill of Quantities.

Clause 34: INSTRUCTIONS, INSPECTIONS AND AUDITS

- 34.1 The Procuring Agency's personnel shall at all reasonable times during construction of the Work be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the construction.
- 34.2 If the Procuring Agency's Representative instructs the Servicing Agency to carry out a test not specified in the Specification to check whether any work has a defect and the test shows that it does, the Servicing Agency shall pay for the test and any samples. All testing shall be borne by the Servicing Agency.
- 34.3 The Servicing Agency shall permit the Funding Source named in the SCC to inspect the Servicing Agency's accounts and records relating to the performance of the Servicing Agency and to have them audited by auditors appointed by the Funding Source, if so required by the Funding Source.

Clause 35: IDENTIFYING DEFECTS

The Procuring Agency's Representative shall check the Servicing Agency's work and notify the Servicing Agency of any defects that are found. Such checking shall not affect the Servicing Agency's responsibilities. The Procuring Agency's Representative may instruct the Servicing Agency to search uncover defects and test any work that the Procuring Agency's Representative considers below

standards and defective.

Clause 36: COST OF REPAIRS

Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Servicing Agency at the Servicing Agency's cost if the loss or damage arises from the Servicing Agency's acts or omissions.

Clause 37: CORRECTION OF DEFECTS

- 37.1 The Procuring Agency's Representative shall give notice to the Servicing Agency of any defects before the end of the Defects Liability Period as herein defined.
- 37.2 Every time notice of a defect is given, the Servicing Agency shall correct the notified defect within the length of time specified in the Procuring Agency's Representative's notice.
- 37.3 The Servicing Agency shall correct the defects which he notices himself before the end of the Defects Liability Period.
- 37.4 The Procuring Agency shall certify that all defects have been corrected. If the Procuring Agency considers that correction of a defect is not essential, he can request the Servicing Agency to submit a quotation for the corresponding reduction in the Contract Price. If the Procuring Agency accepts the quotation, the corresponding change in the SCC is a Variation.

Clause 38: UNCORRECTED DEFECTS

- 38.1 The Procuring Agency shall give the Servicing Agency at least fourteen (14) days notice of his intention to use a third party to correct a Defect. If the Servicing Agency does not correct the Defect himself within the period, the Procuring Agency may have the Defect corrected by the third party. The cost of the correction will be deducted from the Contract Price.
- 38.2 The use of a third party to correct defects that are uncorrected by the Servicing Agency will in no way relieve the Servicing Agency of its liabilities and warranties under the Contract.

Clause 39: ADVANCE PAYMENT

- 39.1 The Procuring Agency shall, upon a written request of the Servicing Agency which shall be submitted as a contract document, make an advance payment to the Servicing Agency in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most two installments according to a schedule specified in the SCC.
- 39.2 The advance payment shall be made only upon the submission to and acceptance by the Procuring Agency of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance



company duly licensed by the Insurance Commission and confirmed by the Procuring Agency.

- 39.3 The advance payment shall be repaid by the Servicing Agency by an amount equal to the percentage of the total contract price used for the advance payment.
- 39.4 The Servicing Agency may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.
- 39.5 The Procuring Agency will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the maximum amount stated in GCC Clause 39.1.

Clause 40: **PROGRESS PAYMENTS**

- 40.1 The Servicing Agency may submit a request for payment for Work accomplished. Such request for payment shall be verified and certified by the Procuring Agency's Representative/Project Engineer. Except as otherwise stipulated in the SCC, materials and equipment delivered on the site but not completely put in place shall not be included for payment.
- 40.2 The Procuring Agency shall deduct the following from the certified gross amounts to be paid to the Servicing Agency as progress payment:
 - a) Cumulative value of the work previously certified and paid for.
 - b) Portion of the advance payment to be recouped for the month.
 - c) Retention money in accordance with the condition of contract.
 - d) Amount to cover third party liabilities.
 - e) Amount to cover uncorrected discovered defects in the works.
- 40.3 Payments shall be adjusted by deducting therefrom the amounts for advance payments and retention. The Procuring Agency shall pay the Servicing Agency the amounts certified by the Procuring Agency's Representative within forty five (45) working days from the date each certificate was issued. No payment of interest for delayed payments and adjustments shall be made by the Procuring Agency.
- 40.4 The first progress payment may be paid by the Procuring Agency to the Servicing Agency provided that at least twenty percent (20%) of the work has been accomplished as certified by the Procuring Agency's Representative.
- 40.5 Items of the Works for which a price of "0" (zero) has been entered will not be paid for by the Procuring Agency and shall be deemed covered by other rates and prices in the Contract.



Clause 41: **PAYMENT CERTIFICATES**

- 41.1 The Servicing Agency shall submit to the Procuring Agency's Representative monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

