



DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
MINISTRY OF HIGHWAYS, PORTS & SHIPPING
ROAD DEVELOPMENT AUTHORITY

**CHINA DEVELOPMENT BANK FUNDED IMPROVEMENT
AND REHABILITATION OF
PRIORITY ROAD PROJECT 3 (PRP3), PHASE-1 (LOT 2)**

CIVIL WORK CONTRACT NO: RDA/RNIP/PRP3/PHASE-1 (LOT 2)/PACKAGE C12

Contract No.	Description
RDA/RNIP/PRP3/Phase1 (Lot 2)/Package C12	Ayagama - Egaloya Road (0.00 - 23.00 km)

CONTRACTOR
**CHINA NATIONAL AERO - TECHNOLOGY INTERNATIONAL
ENGINEERING CORPORATION (CATIC - ENG)**

VOLUME 2
The Particular Conditions
The General Conditions of Contract

JANUARY 2014

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THE PARTICULAR CONDITIONS

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The Particular Conditions of Contract (PCC)

The following Particular Conditions shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

1 General Provisions

1.1 Definitions

Substitute the Sub-Clause 1.1.6.8 with the following.

"Unforeseeable" means not reasonably foreseeable and against which adequate preventive precautions could not reasonably be taken by an experienced contractor by the date for submission of the Tender.

1.12 Confidential Details

Add the following as Second paragraph to Sub-Clause 1.12.

The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out the Contractor's obligations under the Contract or to comply with applicable Laws. The Contractor shall not publish or disclose any particulars of the Works without the previous agreement of the Employer. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

2 The Employer

2.4 Employer's Financial Arrangements

In the last sentence of the first para of Sub-Clause 2.4, delete the words "If the employer intends to make" and replace with words "Before the Employer makes".

3 The Engineer

3.1 Engineer's Duties and Authority

Add the following at the end of Sub-Clause 3.1.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clause of these Conditions:

- (a) Sub-Clause 4.12: Agreeing or determining an extension of time and/or additional cost.
- (b) Sub-Clause 13.1: Instructing a Variation, except;
 - (i) in an emergency situation as determined by the Engineer, or
 - (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Tender.
- (c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- (d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable currencies.

(e) Sub-Clause 20.1: Approving a claim submitted by the Contractor.

(f) Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

3.4 Replacement of the Engineer

Notwithstanding Sub-Clause 3.1, if the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise reasonable objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

4 The Contractor

4.1 Contractor's General obligations

Insert the following at the end of the Sub-Clause 4.1.

The contractor is required to carry out the design of all components of the work in the contract.

The contractor is required to carry out improvements to the geometry of the road within the existing right of way unless otherwise specified. The topographical survey, level survey and cross section survey necessary for this work is also required to be carried out by the contractor. The proposed improvements to the geometry require the approval of the Engineer.

A road condition investigation consisting of visual inspection, DCP testing & trial pits with materials testing is required to be done by the contractor. Based on this investigation, sections of road that require rehabilitation over and above the pavement thickness shown in the bid documents is to be identified by the contractor. The additional thicknesses of construction proposed (if any) require the approval of the Engineer.

The contractor will design bridges & culverts identified for widening and reconstruction. The contractor will also design all protection work in the form of gabion walls, retaining walls, toe walls etc. These designs require the approval of the Engineer.

The contractor will prepare the working drawings resulting from the above and submit same to the Engineer for approval.

The contractor will set out the centre line in accordance with the approved drawings.

4.2 Performance Security

Insert the following at the end of the Sub-Clause 4.2.

Performance Security shall be an on-demand unconditional Bank Guarantee in the form and from a bank acceptable to the Employer. If the Performance Security is issued by a foreign bank situated outside Sri Lanka, it shall be endorsed by a bank in Sri Lanka acceptable to the Employer to make it enforceable in Sri Lanka. This endorsement is unnecessary if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka;

4.3 Contractor's Representative

Substitute the last paragraph of Sub-Clause 4.3 with the following paragraph.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 (Law and Language). If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.7 Setting Out

Add a Paragraph (c) as follows:

(c) When setting out any part of the Works, the Contractor shall give the Engineer sufficient notice to enable the Engineer to check the setting out before the Contractor commences construction of the part concerned.

4.9 Quality Assurance

Delete Sub-Clause 4.9, and replace with the following :

Quality control by the Engineer will apply.

- 4.10 Site Data** Insert following the first paragraph of Sub-Clause 4.10:
Data made available by the Employer in accordance with the preceding paragraph shall be deemed to include data listed elsewhere in the contract as open for inspection at the address stipulated in the Contract.
- 7 Plant, Material and Workmanship**
- 7.1 Manner of Execution** Add the following subparagraph at the end of Sub-Clause 7.1
The Contractor is encouraged to use Goods from sources within the Country, to the extent practicable and reasonable.
- 8 Commencement, Delays and Suspension**
- 8.1 Commencement of Work** Substitute the 2nd sentence of the 1st paragraph of Sub-Clause 8.1 with the following sentence.
The commencement date shall be fixed after the signing of the loan agreement between the Government of Sri Lanka and the Bank extending the loan and 21 days after the receipt of the first advance payment by the contractor.
- 8.3 Programme** Delete Sub paragraph (a) of Sub Clause 8.3 and replace with the following:
(a) the order in which the Contractor intends to carry out the Works including:
(i) A detailed works programme indicating the anticipated timing of each stage of design and construction. The work programme shall be prepared using MS Project or similar Project Management software.
(ii) A detailed mobilization programme with all principal mobilization events including the anticipated timing of procurement, delivery to site, construction, erection and commissioning, provision of Contractors' Engineers facilities, mobilization of key personnel, etc. This programme will provide the basis for the stage release of advance payments as prescribed under Clause 14.2.
- Extend Sub paragraph (d) of Sub Clause 8.3 with the following:
(iii) a supplementary programme in the form of a "time/location" or "Vector" diagram on which the principal activities are displayed against which, corresponding quantities and equipment requirements are detailed; and
- Add the following sub paragraph (e) at the end of sub paragraph (d)
(e) The Contractor shall provide to the Engineer a detailed cash flow estimate, in monthly periods, of all payments in the Contract to which the Contractor is entitled to in his opinion. He shall subsequently provide revised cash flow estimates at monthly intervals as and when necessary, if required to do so by the Engineer.
- Add the following as a separate paragraph at the end of sub paragraph (e)
The submission to and consent by the Engineer of such programmes or the provision of such general descriptions of cash flow estimates shall not relieve the Contractor from any of his duties or responsibilities under the Contract.

8.4 Extension of time for Completion

Delete the words "entitled to an extension of time" and substitute "entitled to have his claim for an extension of time considered", in Clause 8.4.

Add at the end of Sub-Clause 8.4

Exceptionally adverse climatic conditions mentioned in Sub-Clause 8.4 (c) means:

- (A) For the purposes of Sub-Clause 8.4 (c), it is agreed that "exceptionally adverse climatic conditions" shall be exclusively where:
- (i) In any single day, the rainfall measured at the nearest meteorological station, exceeds the 98 percentile value of the daily rainfall for that calendar month for that station, as calculated using the last 120 calendar months of that station's rainfall records or, in the case where the station's rainfall records do not extend back as far as 120 months, then that station's available records, and
 - (ii) work is in progress that day in that station's zone of influence.
- (B) If the Contractor is of the opinion that exceptionally adverse climatic conditions have occurred on any day then he shall notify the Engineer within 42 days of the event and shall supply relevant confirmatory rainfall data. If the Contractor does not so inform the Engineer then no extension of the Time for Completion in relation to that event will be considered or allowed.
- (C) Within 28 days of receiving the Contractor's notification of exceptionally adverse climatic conditions the Engineer shall determine the amount, if any, of the extension of the Time for Completion, taking due account of the nature and extent of the work affected, and shall notify the Contractor accordingly with a copy to the Employer. If the Engineer does not so make his determination then the contractor shall be entitled to one day's extension of the Time for Completion in relation to that event.
- (D) Any delay caused by exceptionally adverse climatic conditions will be "no fault delay" and cost will be deemed to lie where they fall. That is, in the case of such delay the Employer agrees to forego the right to claim liquidated damages for the period of delay and the Contractor agrees to forego any right to claim additional costs arising from such delay.

8.5 Delays Caused by Authorities

Add the following at the end of the paragraph:

It is understood and mutually agreed that the Contractor has considered in his tender that on certain stretches of road where earthwork is involved in cutting and filling for widening of the road platform it is not practicable to shift Electricity, Telegraph posts etc. and divert any underground services until the entire earthwork has been completed; therefore the Contractor will be given possession of the Site on these stretches and carry out the earthwork with the posts or underground services in their existing position and that no additional monetary compensation nor extension of time for completion will be allowed by the Engineer for delays, inconvenience or damage sustained by the Contractor.

10 Employer's Taking Over

10.1 Taking Over of the Works and Sections

Add the following after first paragraph of 10.1
In no circumstance will any part of the Permanent Works be considered substantially complete until at least the following components, if provided in the Contract, are complete to the satisfaction of the Engineer:

- (i) Bituminous surfacing
- (ii) Road shoulders
- (iii) Side drains
- (iv) Culverts & Bridges
- (v) Retaining walls & Masonry work
- (vi) Grassing & slope protection
- (vii) Safety measures

In exceptional circumstances, and where the Engineer is of the view that the safety of public and the Works are not likely to be placed at under risk and, at his sole direction, the Engineer may allow the following components, if specified, to be completed within the Defects Liability Period:

- (i) Kilometre posts

After second paragraph, add additional paragraph as follows:

Before the Works are taken over in accordance with this Clause 10, the Contractor shall supply all drawings approved as appropriate of the work as-built. Unless otherwise agreed, the Work shall not be considered to be completed for the purpose of Taking Over until such approved drawings have been supplied to the Employer.

13 Variations and Adjustments

13.8 Adjustments for Changes in Cost

Delete the text entirely and replace with:

No price adjustment shall apply to foreign currency portion of the contract price payable to the Contractor.

The amounts computed from the formula given under this sub-clause in respect of the rise or fall in the base cost of Labour, Materials, Plant and other inputs to the Works, shall be added to or deducted from the payment to the Contractor if the Contract Price is subjected to adjustments due to fluctuation of prices and stated in the Appendix to Tender.

- (a) The adjustment to the Contract Price in respect of changes in Cost and legislation for local currency shall be determined from following formula,

$$F = 0.966(V - V_{na}) / 100 \sum_{\text{All inputs}} P_x (I_{xc} - I_{xb}) / I_{xb}$$

Where:

- F = Price adjustment for the period concerned
- V = Current valuation of work done for the period.
- V_{na} = Value of non adjustable element. or value of work not considered for price variation.
- P_x = Input percentage of input named X.
- I_{xc} = Current indices of input X.
- I_{xb} = Base indices of input X.

No other adjustment of the Contract Price on account of

fluctuations off inputs shall be made, notwithstanding the fact that the contractor has to pay additional amount under special circumstances.

- (b) The "Input Percentage" means the percentage proportionate contribution of any input in terms of cost of the construction based on the prices prevailing on one month prior to submission of the tender and listed under Clause numbered 13.8 in the Appendix to Tender.
- (c) The "Non adjustable elements" means,
- (i) The work done under the BOQ items that shall not be considered for valuation of price adjustment which are listed under Clause 13.8 in the Appendix to Tender.
 - (ii) Extra works or additional works carried out by the Contractor on orders of the Engineer and are valued under Clause 13 based on the prices prevailing at the time of execution.
 - (iii) Works done under Daywork rates.
- (d) The "Current Valuation" means the gross value of Permanent Work executed during the current valuation period.
- (e) The "Indices" means the monthly indices published by Institute for Construction Training and Development (ICTAD) for different Inputs.
- (f) "Base Indices" means the indices for the input, prevailing one month prior to the latest date for submission of tenders.
- (g) In the case of first interim bill, the current indices for the purpose of calculation of price adjustment shall be taken as the indices prevailing on first month after the commencement of the contract. For any other interim claim or for the final claim the current indices shall be taken as the indices prevailing for the calendar month, one month after the previous valuation was done.

If the Contractor fails to complete the Works within the time for completion prescribed under Sub-Clause 8.2 (*Time for Completion*) or 8.4 (*Extension of Time for Completion*) the price adjustment for the work performed after the due date of completion as described above shall be made using the current indices prevailed at the due date for completion.

If, after the date 28 Days prior to the latest date for submission of Bids for the Contract, there occur in the country in which the Works are being or are to be executed changes to any Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or

by-law which causes additional or reduced cost to the Contractor, other than under the preceding sub-clauses of this clause, in the

execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formula in accordance with the provisions of this Clause.

14 Contract Price and Payment

14.2 Advance Payment

Substitute the sub-clause 14.2 with the following:

- (a) The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilisation in respect of the Works in an amount equivalent to 15 (Fifteen) per cent of the Accepted Contract Amount named in the Letter of Acceptance, payable in proportions of foreign and local currencies of the Accepted Contract Amount. Payment of such advance amount will be due under separate certification by the Engineer after (i) execution of the Form of Agreement by the parties hereto; (ii) provision by the Contractor of the performance security in accordance with Sub-Clause 4.2; (iii) Submission of Programme, cash flow estimate and methodology as per clause 8.3 (iv) completion of mobilization {except mobilization of items provided under sub paragraphs (b) and (c) below} as set out in the detailed mobilization schedule which the contractor be required to submit with his Bid and which identifies key personnel and key mobilization targets and (v) provision by the Contractor of an on-demand unconditional Bank Guarantee in the form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. If the Bank Guarantee is issued by a foreign bank situated outside Sri Lanka, it shall be endorsed by a bank in Sri Lanka acceptable to the Employer to make it enforceable in Sri Lanka. This endorsement is unnecessary if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka; Such bank guarantee can be split up into 4 guarantees for equal amounts to be released on repayments. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to the last paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.
- (b) In addition to the advance mentioned in sub para (a) above, the Employer will pay another interest free advance on satisfactory evidence of Letter of Credit or other financial instrument for purchase or leasing of stone crushers, pug mills, bitumen distributors & aggregate spreaders, asphalt concrete hot-mix plants and pavers as applicable to the contract, or in the case of such plant and equipment already owned by the contractor, satisfactory evidence of condition and availability for the project e.g. photographic evidence and certification from the Employer of the current or previous project on which the plant or equipment was deployed, and

subject to the same terms and conditions specified in paragraph (a) above. The maximum of such advance shall be 10 (ten) percent of the Accepted Contract Amount. This advance shall be further subject to the condition that (i) such equipment is considered by the Engineer to be necessary for the works, (ii) such equipment are in working order

(c) In addition to the advance mentioned in sub para (a) and (b) above, the Employer will pay one more interest free advance on erection and commissioning and calibration of plant subject to the same terms and conditions specified in paragraph (a) above. The maximum of such advance shall be 5 (Five) percent of the Accepted Contract Amount.

(d) The advance payment under (a) (b) and (c) above shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached 10 (Ten) percent of the Accepted Contract Amount and shall be made at an amortization rate calculated in accordance with the following formula

$$Y = \frac{(X - 0.1) \times Z}{(0.8 - 0.1)}$$

Y = Cumulative repayment

Z = Total amount of Advance

X = Percentage value of cumulative work done

in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 80% of the Accepted Contract Amount has been certified for payment.

(e) The advance loan shall be used by the Contractor exclusively for the purposes mentioned above in sub paragraphs (a), (b) and (c). Should the Contractor misappropriate any portion of the advance loan, it shall become due and payable immediately, and no further loan will be made to the Contractor thereafter.

14.7 Payment

Delete the words "in the payment country (for this currency) specified in the Contract" of the last sentence of the Sub-Clause 14.7.

And add the following at the end of Sub-Clause 14.7.

However the above payments shall become due only upon receipt of the required funds from the Bank extending the loan to the Employer.

18 Insurance

18.1 General Requirements for Insurances

Add the following at the end of Sub-Clause 18.1:

The Contractor shall place all insurance relating to the contract with insurers in Sri Lanka acceptable to the Employer or in the alternative with insurers outside Sri Lanka provided such insurance is endorsed

by an insurer in Sri Lanka acceptable to the Employer to make it enforceable in Sri Lanka.

20 Claim, Disputes and Arbitration**20.6 Arbitration**

Delete the word 'international' from the 2nd line of the first paragraph.

Delete the contents of sub paragraph (a) and insert the following in its place

- (b) The dispute shall be finally settled under the UNCITRAL rules of arbitration. Arbitration proceedings shall be conducted in Colombo, Sri Lanka.

ADDITIONAL CLAUSES**21 Taxation****21.1 Foreign Taxation**

The priced bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

21.2 Local taxation

All duties, taxes and other levies (other than custom duties at importation and Value Added Tax) payable by the Contractor under the Contract, or for any other cause, as of the days 28 days prior to the latest date for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder. Nothing in the contract shall relieve the contractor from his responsibility to pay any tax that may be levied in Sri Lanka on profits made by him in respect of the Contract.

Value added Tax (VAT) payable by the contractor shall be shown separately in the summary of the bid.

21.3 Personal Income Taxes

The Contractor's staff, and labour will be liable to pay personal income taxes in Sri Lanka in respect of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations

21.4 Custom Duties

Equipment, machinery, vehicles, materials, all accessories and all other consumables to be used in the civil works, imported to Sri Lanka by the contractor, will be exempt from custom duties subject to the condition that all such equipment, machinery, vehicles, materials, accessories and un-used consumables at the end of the contract will be exported by the contractor.

22. Drawings and Photographs of the works

The Contractor shall not disclose details of drawings furnished to him and works on which he is engaged without the prior approval of the Engineer in writing. No photograph of the works or any part thereof or equipment employed thereon shall be taken or permitted by the Contractor to be taken by any of his employees or any employees of his sub-contractors without the prior approval of the Engineer in writing and no such photographs shall be published or otherwise circulated without the approval for the Engineer in writing.

THE GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS OF CONTRACT APPLICABLE SHALL BE

Conditions of Contract

for Construction

FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE
EMPLOYER

FIRST EDITION 1999

FIDIC 1999 (Red Book)

