



**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

**MINISTRY OF PORTS & HIGHWAYS**

**ROAD DEVELOPMENT AUTHORITY**

**HAMBANTOTA HUB DEVELOPMENT PROJECT**

**CONSTRUCTION OF**

**EXTENSION OF SOUTHERN EXPRESSWAY**

**FROM WETIYA TO ANDARAWEWA**

**CONTRACT AWARDED TO**

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION**

**LIMITED**

**CIVIL WORK CONTRACT NO: RDA/RNIP/HH/01**

**VOLUME 2**

**PARTICULAR CONDITIONS OF CONTRACT**

**AUGUST 2013**

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**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

1.1.1.2 Insert at the end "Supplementary Agreements or any other Memoranda of Understanding or any other instrument".

1.6 Contract Agreement Add the following after first paragraph.  
The Parties may also enter into Supplementary Agreements, Memoranda of Understanding or any other instrument, if deemed necessary, to alter, amend, delete, anything given in the documents or insert anything not given in the documents.

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

2.1 Right of Access to Site Insert the following paragraphs in between paragraphs 2 and 3.  
All efforts will be made by the Employer to give access to site to enable the Contractor to proceed in accordance with the programme submitted under sub clause 8.3. The Contractor shall base his programme taking into consideration the areas where possession of site is legally available to 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 paragraphs in between paragraphs 1 and 2.

The Contractor shall carry out and be responsible for the design of the entire works other than the parts of the works for which detailed designs are given in the contract. The contractor shall also be responsible for the design necessitated in remedying any defects in the works. The design shall be carried out in accordance with the specifications applicable to the design and all other requirements of the contract.

The contractor shall carry out the detailed designs based on preliminary designs / outline designs / conceptual designs carried out by the Employer and given in the contract. The outcomes of the design, including working drawings, shall have sufficient details in compliance with the contract documents to the satisfaction of the Engineer. The designs require the approval of the Engineer.

The preliminary designs / outline designs / conceptual designs given in the contract include the following:

- (a) A geometrical design of the entire expressway. This includes plan and profile, horizontal alignment, vertical alignment, geometric design of interchanges, drainage facilities, traffic signs & road markings and street lighting systems. (The contractor is expected to adopt this design but may make minor adjustments to it.)
- (b) An outline pavement design and typical cross sections as its outcome.
- (c) Conceptual designs for all structures.

The Contractor shall not make any changes to the geometric design features given in the typical cross section.

The surveys and investigations to be carried out by the Contractor in respect of the design of the entire works, as detailed in the specifications or otherwise required shall be deemed to be a part of the design.

In case an initial design for a part of the work is not available in the contract or in the event the contractor wishes to deviate from an initial design given in the contract for good reason, the contractor shall with due care and diligence propose the most reasonable conceptual design for the consent of the Engineer. The consent of the Engineer shall be given in consultation with the Employer. On receipt of this consent the contractor shall proceed with the detailed design. The cost of complying with this sub clause shall be borne by the contractor, unless otherwise provided in the contract.

The designs shall be carried out by qualified Engineers or other professionals and shall comply with criteria (if any) stated in the contract. For each part of the works, the prior consent of the Engineer shall be obtained for the designer and/or design sub-contractor, if they are not named as such in the contract. Nothing contained in the contract shall create any contractual relationship of professional obligation between any designer or design sub-contractor and the Employer. The contractor warrants that he, his designers and design sub-contractors shall have the experience and capability necessary for the design. The contractor undertakes that his designers and / or design sub-contractors shall be available for discussions with the Engineer at all reasonable times during the contract period.

**4.2 Performance Security** Insert the following at the end of the Sub-Clause 4.2.

The 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

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paragraph shall be deemed to include data listed elsewhere in the contract as open for inspection at the address stipulated in the Contract.

#### **4.18 Protection of the Environment**

Insert following paragraphs at the end of Sub-clause 4.18.

The Contractor shall adhere to all Environmental requirements of the Contract, in particular to those set out in Environmental Management Action Plan.

The Contractor shall refrain from using asbestos in the construction or as a construction material.

The Contractor fails to comply with the above requirements in a reasonable manner, the Engineer shall order a third party to rectify the shortcomings and shall recover the cost of such works from the Contractor.

#### **6.5 Working Hours**

Add the following at the end of Sub-clause 6.5.

The Contractor shall reasonably notice to the Engineer for work under paragraph (b) above as given in the Appendix to Tender.

#### **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.

##### **7.2 Samples**

Add the following Sub Clause 7.2 (c) after Sub Clause 7.2(b)

The Contractor shall obtain the approval of the employer for all imported machinery and equipment intended to be incorporated into the works.

#### **8 Commencement, Delays and Suspension**

##### **8.1 Commencement of Work**

Substitute the 2<sup>nd</sup> sentence of the 1<sup>st</sup> 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 Agency extending the loan and within the period 14 – 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.

Add the following paragraph at the end of the Sub-Clause

The Engineer in reviewing the programme submitted by the Contractor under sub clause 8.3, shall take into consideration PCC 2.1 ( Right of Access to Site)

#### 8.4 Extension of time for Completion

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.



- (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 to 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.

It is also understood and mutually agreed that the Contractor has considered in his tender that in areas where land acquisition has been identified, he will be given possession of the site only when the procedural aspects as legally required in respect of land acquisition are completed for him to programme and execute the works and that no additional monetary compensation nor extension of time will be entertained or granted by the Engineer for consequential 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

There shall be only one taking over certificate for the entire project unless otherwise indicated in the Appendix to Tender regarding sectional take over or take over in parts.

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
- (viii) Toll gates
- (ix) W rails and Fencing
- (x) Distance Plates and Direction Boards

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.

**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 10 (Ten) 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 completion of that part of the design of the works required for the commencement of construction of the expressway as per the approved programme of work and 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 05 (five) 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 20 (Twenty) percent of the Accepted Contract Amount and shall be made at an amortization rate calculated in accordance with the following formula

$$Y = \frac{(X - 0.2) \times Z}{(0.8 - 0.2)}$$

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(a).

But not before the signing of the loan agreement between GOSL and the bank extending the loan.

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. These payments shall be made in either in United State Dollars or in currency of loan except the Advance Payment described under 14.2(a).

**14.8 Delayed Payment**

And add the following at the end of Sub-Clause 14.8

Interest rate applicable for foreign component shall be Libor plus (+) 0.5% per annum

Interest rate applicable for Local component shall be the minimum lending rate applied by the Central Bank of Sri Lanka for lending to Commercial Banks plus (+) 2.0% per annum

**14.9 Payment of Retention Money**

Add the following at the end of Sub-Clause.

If the Contractor provides Retention Security in a form and from a Bank acceptable to the Employer in lieu of the retention, then the Retention shall be paid to the Contractor.

**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 2<sup>nd</sup> line of the first paragraph.

Delete "Rules of Arbitration of the "International Chamber of Commerce" under (a) and insert

"UNCITRAL RULES OF ARBITRATION", and that the Arbitration Proceedings should 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 those that fall under sub clause 21.4 below) payable by the Contractor under the Contract, or for any other cause, as of the day, 28 days prior to the 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. If the contractor is exempted from

VAT he shall not be entitled to make any claims in respect of VAT

If any exemption, waiving off or exclusion of duties, taxes and levies at importation for materials and equipment to be incorporated into the works are subsequently made by the Employer (based on permission given by the statutory authorities for any exemption, waiving off or exclusion of duties, taxes and levies) deductions will be made from payments due to the contractor to ensure the benefit derived thereby will accrue to the Employer.

The Contractor shall submit all such documentation related to such duties, taxes and levies payable to the respective statutory authorities for which exemption, waiving off or exclusion of duties, taxes and levies are made. Failure to do so will be deemed to be a breach of the contract.

**21.3 Corporate and Personal Income Taxes**

The Contractor will be liable to pay Corporate tax under the Laws and regulations applicable. 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.