

**In the name of Allah, the most Merciful**  
**Explanatory Memorandum for the Draft General Construction Contract Form**

Under Article (72) of the Government Tenders and Procurement Law issued by Royal Decree No. M/58, dated 4/9/1427H, which requires that: "The Ministry of Finance shall prepare the contract forms in accordance with the provisions of this Law and bring them before the Council of Ministers for approval".

The Ministry has prepared the preliminary draft of the (General Construction Contract Form - Basic Document and General Conditions) attached to this Memorandum after reviewing the Government Tenders and Procurement Law issued by Royal Decree No. M/58 dated 4/9/1427H and its Implementing Regulations issued pursuant to the Minister of Finance decision No. (362) dated 20/2/1428H, and the Council of Ministers' resolution No. (136) dated 13/6/1408H under which the Public Works Contract Form was issued and the Council of Ministers' resolution No. (23) dated 17/1/1428H issued on the arrangements taken to address the obstacles facing the construction sector in the Kingdom which sets forth in its (item (6) (to reconsider the unified government contract and prepare a new version, to be guided by the items of the Construction Projects Contract (FIDIC), and the Council of Ministers' resolution No. (155) dated 5/6/1429H which sets forth in its paragraph (V): "to expedite the completion of the study of the unified government contract for Public Works, that shall be guided by the items of the Construction Projects Contract (FIDIC)".

The High Order No. 998/MB dated 23/2/1430H, approving the Ministry of Finance's statement that the new drafting of the Public Works contract is under preparation. It will be guided by the Council of Ministers' resolution No. 155 dated 5/6/1429H and Construction Projects Contract (FIDIC), including the amendment of the prices of the contract in the event that the prices of raw materials change, by increase or decrease. The letter of His Highness the President of the Council of Ministers' Court No. 31832/B dated 4/8/1429H, to which a preliminary copy of the project of Public Works contract (A Research Project within Programs of the King Abdulaziz City for Science and Technology) is attached. The

Unified Contracting Contract for Construction Projects (Part 1) General Conditions (FIDIC 99M) Translation in Arabic under the letter of the National Center for Financial and Economic Information No. 4/57894 and dated 9/7/1428H was also reviewed. The Ministry has prepared the preliminary draft of the project as indicated and would like to clarify the following:

**First:** the new draft of the project has mainly depended on the current form as the basis for the project, the form of the Construction Projects Contract (FIDIC), Government Tenders and Procurement Law and its Implementing Regulations referred to above. In addition, the Ministry's previous studies and observations have also been used on the current Public Works contract form from the public and private sectors and some other forms such as the form of King Abdulaziz City for Science and Technology (KACST).

It is noted that most of the contract forms were prepared to focus on risk coverage from the employer's point of view. While the FIDIC contract reflects the views of others, including engineers and architects, and disregards the role of the project owner. The project management is entrusted to the engineer. The FIDIC contract was drafted by the International Federation of Engineers, specifically by consultant engineers affiliated with civil society to execute projects that are essentially subject to the private sector and that's from one side away from the employer. In the FIDIC form, the supervisor engineer has been given the authority of the employer, and has already been criticized for this but this does not diminish its value as a global guiding form. On the other hand, the drafting of FIDIC has been prepared in a manner consistent with the work environment in the developed industrialized countries, which have harmonized price reference, financing tools, specialized insurance services, and legal and arbitration systems that are commensurate with the terms of this contract, especially as the FIDIC depends on the method of deriving prices from its physical, service and financing components, and the scope of employment of the FIDIC contract can be expanded according to the development of the services locally referred to in the future.

The FIDIC contract has been quoted for a number of terms and obligations after re-drafting

them in accordance with the nature of the administrative contract in the Kingdom and the engineer was entrusted with all the responsibilities and powers that have no doubt on the validity of their results in terms of technical analysis or professional report. The management of the contract, such as the issuance of decisions with approvals and confirming the works was entrusted to those responsible for projects at their executive and procedural levels; including for example, the commissioning of additional work for the project, estimating duration necessary for the project, the costs involved, the order to suspend or resume the work, the power to extend the contract, exemption from fines, consideration of the contractor's claims for compensation and the issuance of the necessary decisions in a number of technical or procedural matters.

**Second:** the new drafting of the project took into consideration the achievement of the principle of balancing the rights and obligations of the employer and the rights and obligations of the contractor and achieving justice in the distribution of the obligations as much as possible, including the recognition of the principle of compensating the contractor by the administrative body, the amendment of the contract's prices and the responsibility of the employer for his actions that do not conform to the terms of the contract, while the employer (the administrative body) maintains a number of exceptional powers required by the nature of the administrative contracts. In return, the employer guarantees compensation to the contractor for the use of his right in these powers.

The new drafting also defines and limits the time an engineer or employer should take to issue approvals and decide on claims so as not to disrupt the progress of the project or to harm the contractor as a result of delay. The employer was also given more flexibility in dealing with the contract than the current form, such as the consideration of compensation, the validity of extending the contract and the termination of the agreement of the contract. This drafting will, in the future, reduce the risk undertaken by the contractor, which will eventually reduce the

cost of the project and overcome delayed execution.

The project is called the (General Construction Contract Form) as it was noted on the current designation (Public Works) to include other works; such as contracts for the provision of consultancy services and maintenance and operation services because they are considered in the administrative jurisprudence as part of public works.

The project was divided into two sections along the same lines as the current public works contract form:

A- The basic contract document which contains the main elements of the contract with (11) articles

B. General Conditions:

That were divided into 20 chapters included (55) main articles. These divisions came in close proximity to the divisions of the FIDIC contract form and were to some extent consistent with the stages of preparing the project and putting it up for public tender and then starting with its execution and ending with the takeover of the works.

**Third: The most important provisions and features included in the project.**

1- (Chapter one) deals with definitions where definitions have been broadened by defining a number of new terms (Article 1). General provisions such as the scope and language of the contract, payment of fees, taxes, tender adequacy, inspection of work's sites, contractor responsibility for reviewing engineering designs, communication and sending notifications were added to this chapter. (Chapter two) (Site delivery and soil conditions) included and addressed provisions relating to the site. (Article 3) gave the contractor the right to receive financial and temporal compensation in the case of the employer's delay in delivering the site in accordance with the terms of the contract. This chapter also addresses the cases of soil, original points and location of works, as well as the problem of underground utility networks (Article 6) and the lack of responsibility of the employer, the supervising engineer and the design engineer for the accuracy and completeness of information and data set out or referred

to in the contract documents in respect of those networks at the site or adjacent area. The contractor was given the right to claim financial and temporal compensation for the damage caused to him if underground networks that were not described in the contract documents were discovered. This Chapter (Article 7) also deals with the financial difficulties that the contractor may face, which he could not foresee, and it is called in the administrative jurisprudence (the theory of financial difficulties) and the implications of such difficulties, including compensating the contractor if he incurs additional costs due to those difficulties.

2- (Chapter three) (Article 8) refers to the provisions concerning the employer, including the right to appoint a project manager, the assistance provided by the employer, the disclosure of the financial arrangements and the negligence of the employer. (Chapter four) addresses the contractor's obligations (Articles 9 to 24) which include final guarantee, contractor supervision, architectural design review, waiver of contract, obtaining licenses and permits, conforming to standard specifications, national product priority, safety and guarding procedures, environmental protection, traffic and special charges, intellectual and industrial property, discovery of artifacts. (Chapter five) refer to the provisions relating to the project supervising engineer (Articles 25, 26, 27) where the responsibilities and powers of the engineer and the representative of the engineer have been determined and it has been confirmed that the engineer has no power or authority to amend the provisions of the contract or to exempt the contractor from any of its duties or obligations under the contract nor to take any action resulting in delay in the execution of the works or increase in the employer's financial obligations without the prior consent of the employer.

3- (Chapter six) addresses provisions relating to the timetable for the execution of the works, so that the contractor undertakes to carry out the works according to a specific timetable to be submitted before the commencement of the work according to the conditions specified for that purpose (Article 28). (Chapter seven) (Article 29) addresses provisions related to employees and workers. The contractor's obligation to observe the terms of employment and employment

of workers and the settlement of jobs and compliance with the rates of wages so that their wages are not below the rates followed by the owners of the trade and industry crafts in the area in which the works are carried out and below the minimum wage rate set by the competent authorities. It also provides for compliance with industrial security regulations.

This Chapter also guarantees the right of the employer to take measures to ensure compliance with the provisions of this Article, including the withdrawal of work from the Contractor.

(Chapter eight) Articles (32,31,30) address the use of materials and compliance with the basis of manufacture, and provide for the contractor's obligation to establish a quality control system to demonstrate compliance with the requirements of the contract.

4- The project designated a special chapter to tests (Chapter nine) Article (33) and committed the contractor to subject all materials and mechanical and industrial equipment to any tests that the engineer requests, including:

- Testing of materials and mechanical and industrial equipment.
- Date and place of tests
- Cost of tests.
- Refusal of materials and mechanical and industrial equipment.
- Repair works.
- Examination of work before its coverage.
- Contractor's obligation to search for causes of defect or faults.
- Tests upon completion.

It also committed the contractor to secure testing and inspection equipment and machinery and sources of energy.

5- The project has mandated the additional work, changes, assessment of changes and their impact on the timetable, reduction of the contract quantities and the determination of powers in accordance with the provisions of (Chapter ten) (Article 34). The project also set up an appropriate mechanism for estimating the value of the additional works if those works did not

have similar items so that the contractor offers its prices. Prices are reviewed by the engineer compared to the references and prevailing prices in proportion to the quantities and the quality of the works executed and are submitted to the employer for submission to the tender examination committee or purchasing committee to study the commissioning of such works and the suitability of prices offered. The contractor shall be subject to the prices recommended by the committee. If the contractor does not approve such prices, it shall be executed by another contractor in accordance with the provisions of Article (58/4) of the Implementing Regulations of the Government Tenders and Procurement Law.

6- The project (Chapter 11) Articles (37,36,35) specified the period of completion, delays and suspension of work, and systems for processing the extension of the contract so that the extension of the contract is decided within a specified period to prevent the government body from seizing a percentage of the contractor's entitlements unjustifiably against a delay fine by giving the employer the authority to directly grant an extension to the contractor without recourse to the Ministry of Finance within a specified period in the following cases:

A- Assignment of additional work in accordance with the terms of assignment.

B- Suspension of works or sections thereof by order of the employer or approval thereof, or for reasons attributable to the employer.

C- Insufficient funds for disbursement of the project by agreement between the contractor and the employer.

D. The employer or engineer's delay in issuing the approvals or the adoption of the samples for a period more than ten day from the period specified for this under the terms of the contract.

E - The employer's delay in the delivery of the site, affecting the timetable for the execution of the project.

F- If the contractor faces a soil condition different than that specified in the specifications of the contract, or is faced with networks of underground facilities or is subject to financial

difficulties.

G - Errors in identifying the original points and identifying the works' sites, which are the responsibility of the employer.

H- If the contractor is unable to obtain the permits and licenses within the period specified for issuing them for reasons that attributable to the employer or to the issuing authorities.

I- If artifacts or valuable objects are discovered at the site resulting in the suspension of the works or sections thereof.

J- Delay in execution as a result of testing or re-examination within the responsibility of the employer.

K- Delays in the payment of the contractor's dues.

L- Any delay, obstruction or impediment attributable to the actions of the employer or its staff or any of the contractors working at the site.

In relation to the authority of the administrative body in agreement with the Ministry of Finance, it has been limited in specific cases (Article 35/3), the delay in execution due to the employer's risks or due to the contractor's compliance with the instructions of the competent authority and any delay in execution due to emergency circumstances beyond the control of the parties.

The procedures for the contractor to submit extension claims and determining them within specified periods have been determined (Article 35/4) so as not to disrupt the progress of the project.

As for the method of determining the fine imposed on the contractor in case of delay in execution, it has not changed, and the method specified in the Implementing Regulations of the Government Tenders and Procurement Law was applied, in addition to deducting the costs of supervision resulting from the delay. Article (37) of this Chapter included stopping and suspending the works due to the employer, resuming the work and the consequences of suspension.



7 – The project regulated (Chapter Twelve) terms of payment and disbursement of contractor's entitlements and procedures for the payment of the contractor's receivables as the advance payment and periodic progress billings. The project has specified a period for payment of the progress bill (Article 38/3) that shall not exceed (60 days) from the date of submitting the progress bill by the contractor to the engineer until the date of payment; thus the party has a period of 30 days until the payment order is approved by the comptroller and 30 days from the date of such approval until the payment of the progress bill is made, in accordance with Article (63) of the Implementing Regulations of the Government Tenders and Procurement Law, stipulating that (the period of payment shall not exceed thirty days from the date of the payment order or the check from the comptroller). The project also committed the engineer to complete the review and approval of the progress bill within a period not exceeding (15) days. For the purpose of assisting the contractor financially during execution, the project permits the payment of 70% of the value of permanent materials and on-site equipment, provided that no more than 50% of the value of the item is paid to the contractor (Article 38/6).

On the other hand, the project obligated the contractor to pay the subcontractors' entitlements and the entitlements of workers and employees (Article 38/8) and gave the employer the right to pay them directly if the contractor did not pay those entitlements.

The project has determined the compensation of the contractors and the amendment of the contract prices by increasing or decreasing (Chapter Thirteen), Articles (40,41) so that the employer shall compensate the contractor and amend the contract prices in the following cases:

First: if local laws and regulations have been amended or new regulations and legislations have been issued after the contractor submits his bidding and this has led to a change in the cost of the contract.

Second: Compensation when the prices of raw materials change so that the contractor shall be compensated if the prices of the raw materials provided for in the terms of the contract have

increased and in return the contract is reduced in the event of a decrease in the prices of those materials according to the rules in force at the Ministry of Finance and the raw materials specified under the contract are cement, asphalt, precast concrete, wood, pipes, and cables), as well as any other raw materials designated by the Ministry of Finance or in agreement with it. (Article 40/2).

Third: Compensation for material difficulties and soil conditions Article (40/3).

Fourth: Compensation for the actions of the employer or the competent authorities and the decisions thereby that entail the contractor incurs additional financial costs in the cases specified in the contract and its terms Article (40/4) which are:

- 1- The employer's delay in handing over the site for the specified period.
- 2- The employer's fault in identifying the original points and work sites.
- 3-The employer is late in issuing, reviewing or approving the engineering designs for the specified periods.
- 4 -The employer or the competent authorities are late in the issuance of approvals and credits or licenses and permits.
- 5 - The works or parts thereof are delayed or affected by the discovery of artifacts at the worksite.
- 6 - Suspension of works or parts thereof by parties other than the contractor.
- 7- The employer is late in paying the contractor's dues for the specified period.

Fifth: Compensation of the contractor for the expenses he incurs for repair of damages due to the employer's risks.

Sixth: Compensation of the contractor in case of termination of contract for reasons not attributable to the contractor.

The project has established specific procedures for determining claims for compensation to protect the rights of the parties (Article 41). These procedures included submitting claims for compensation and the time limits for submitting a claim so that the contractor submits his

claim, including all necessary documents, to the supervising engineer within a period not exceeding (60) days from his knowledge of the incident or his presumed knowledge or during the remainder of the contract term, which in turn is examined and submitted to the employer within a period not exceeding (21) days from receiving the claim of completed documents.

The employer shall then study the contractor's application and submit it to the tender examination committee within a period not exceeding (45) days from the date of receipt of the engineer's report with completed documents. Except what is stated directly in the contract by the employer or if the contractor objected to the award, he has the right to submit his claims to the competent judicial authority. It is worth noting that the contractor is not entitled to compensation unless the damage is proven, or the additional cost is incurred as a result of the execution of the works.

The project also set a maximum amount of compensation that can be paid directly by the employer so that the total amount paid to the contractor does not exceed more than 20% of the value of the contract and is paid from the appropriation allocated to the project.

Articles 42, 43, and 44 of the Project (Chapter Fourteen) regulated the process of taking over the works from the contractor and allowed the employer to take over any completed section of the work if the project is divided into smaller sections or the employer has the desire to benefit from this completed section. It also obliged the employer to inspect the project for the initial takeover within a specified period and the employer's use of the project or section thereof shall be regarded as a preliminary receipt unless otherwise specified. Article (45) stipulates procedures for the withdrawal of work from the contractor and the execution at his expense in accordance with the provisions stipulated in the Government Tenders and Procurement Law and its Implementing Regulations. With making some amendments to the text of Article (53) of the Government Tenders and Procurement Law, which included giving the administrative body the free choice in the case of withdrawal of work between the termination of the contract or the execution at the expense of the contractor by specifying the cases in which the contract

may be terminated and singled out in a separate paragraph. This is due to the fact that many parties do not differentiate between termination and execution at the expense of the contractor. The project stated the regulations of defects and the work warranty (Chapter 16) and defined the period of annual warranty for the project as (the maintenance period specified in the contract for a calendar year beginning from the date of initial takeover until the date of final takeover of the works, during which the contractor shall maintain and repair the defects or omissions in the works performed as provided in the terms of the contract) (Article 1/1 / R). Article (46/3) stipulated that the work shall be delivered to the employer at the end of the annual warranty period and shall be in a state of quality not less than the condition it was in when it started its warranty period except as may be caused by wear and tear. With respect to the ten-year guarantee, the project is considered to be starting from the date of the initial takeover instead of the final takeover, because the completion of the project and the benefit of the employer started from the date of initial takeover.

10. The project stated the risks and liability in (Chapter 17), set the contractor's responsibility for personal injury, illness or death caused to any person, whether due to the contractor's designs or the execution of the works, as well as the damage or loss to the property, and specified the employer's responsibility in this regard.

It also clarified the risks of the employer (Article 50), which the employer bears the damage caused by it. These risks include wars, strikes, explosive materials, nuclear radiation, pressure waves arising from aircraft and natural disasters, and the employer's use or occupancy of any part of the work, as well as the design of any part of the work which has been prepared by the employer or his employees unless there is a failure of the contractor in detecting design errors. Article 51 of this chapter clarified force majeure which deals with any sudden incident that occurs after the conclusion of the contract and before its completion, which leads to the impossibility of executing the contract or part of it. It also defined the conditions of force majeure and the consequences resulted from the employer and force majeure risks.

11- The Project (Chapter Eighteen) (Article 53) stated the provisions concerning insurance, where the contractor is obliged to provide insurance to:

a- The project and its components

b- injuries or claims related to the death or injury of any person as a result of the execution of the works.

c- third parties' property.

This chapter also included the risks excluded from insurance and the consequences of the delay of the contractor in the issuance of insurance policies. The contracts, which cost (SR 5 million) and less, have been excluded in accordance with the provisions of this chapter.

12- Project (Chapter Nineteen) regulated cases in which the contract may be terminated and consequences of such termination (Article 54):

First: Termination of the contract for the public interest.

Second: Termination of the contract by agreement of the parties in the event of the employer delaying the delivery of the worksite for more than ninety days, and in case the employer continues to suspend the entire work for more than (180) days according to the rules and procedures specified in this chapter.

Third: Termination of the contract due to the risks of the employer or force majeure in accordance with the rules and procedures specified in Article (54/3).

Article 54/3 of this chapter addressed the consequences of termination of the contract, including the evacuation of the site, the contractor's accounting of the works performed, the payment of the works and stored materials on the site, the release of the guarantees provided by the contractor and the contractor's compensation not exceeding 10% of the value of the works performed, in the case the contract is due not to the contractor in order to cover the following costs and expenses:

a- The project administrative expenses, including bank fees.

b- The cost of removal of temporary works and contractor's equipment, evacuation and

cleaning of the site.

C - The cost of deporting the contractor's employees and full-time employees to carry out the work.

13- Project (Chapter Twenty) (Article 55) stated the provisions relating to the termination and settlement of disputes between the two parties, using three methods:

a) To resolve the dispute amicably.

b) To resolve the dispute through the judiciary.

c) Resolving the dispute by resorting to arbitration according to the agreement of the parties, in accordance with the Saudi Arbitration Law and its Implementing Regulations, and after the approval of the Ministry of Finance and in the contracts executed outside the Kingdom by a foreign contractor. Resolving certain disputes between the contractor and the employer through arbitration, if this is done, shall reduce the burden on the administrative judiciary in many disputes of administrative contracts and the speed of settling disputes between the contractors and the administrative authorities during the execution of the project which always impede the execution of the project or the contractor is forced to stop because of the large number of deductions and the lack of financial liquidity or for technical reasons or things beyond the control of the parties if these matters are settled, the project will avoid many obstacles.

Fourthly: when approving the draft contract form, some articles in the Government Tenders and Procurement Law shall be amended in accordance with the provisions of Article (72) of this Law, which stipulates that (the Ministry of Finance shall prepare the forms of contracts in accordance with the provisions of this Law and submit them to the Council of Ministers for approval).

The articles that need to be amended are:

1. Amendment of Article (30 / B) of the Law so that the specified period of delivery of the Site to the Contractor shall begin from the date of the notification instead of the date of

awarding the bid.

2. Amendment of Article (38) of the Law to increase the percentage of the advance payment in contracts of construction projects to 10% instead of 5%.

3- Amendment of Article (43) of the Law concerning the increase or reduction of the value of the contract in the case of modification of customs tariff, fees, taxes, materials or services that are officially priced, etc., so that: (if local legislation or regulations are amended or new legislations are issued after the submission of the contractor's offer and this leads to the increase or reduction of the cost of the contract, such increase or reduction shall be offset. The Implementing Regulations of the Law has specified relevant procedures.

4- Amendment of Articles (51 and 52) of the Law pertaining to the extension validity of contracts and exemption from delay penalty by the project owner or in agreement with the Ministry of Finance in accordance with the rules stated in the form.

5- Amendment of Article (53) of the Law containing cases in which the employer may withdraw the work from the contractor, as follows:

A) The deletion of the term (and then terminating the contract) from the source of the Article, because in reality, the contract is not terminated unless the party refrains from the execution of the project or its specifications are changed. In addition, a number of government agencies use the term “termination of the contract” incorrectly.

B) Adding a new paragraph to the end of Article (53/1) as follows:

53/1 (If the work is withdrawn from the contractor according to the reasons referred to in this Article and the government agency believes that there is an interest in not continuing to execute the project under the same conditions and specifications of the contract or the project has been canceled, the contract shall be terminated, and the final guarantee provided by the contractor shall be confiscated).

C) An amendment to the beginning of paragraph (e) of this Article shall be made due to the change of its provision after the beginning of the Article is amended. It shall be given a

separate number (53/2) and shall read as follows:

53/2 (If the contractor dies and his/ her personal qualifications are considered in the contract, the contract shall be terminated, his dues shall be settled, and his guarantees shall be returned. The governmental agency may continue to contract with the heirs if sufficient technical and financial guarantees are available to them).

6- Amendment of the text of Article (76) so that the ten-year guarantee shall enter into force on the date of the initial takeover of the project instead of the date of its final takeover.

7- Separating the compensation cases considered by the Commission for the consideration of compensation applications and preventing dealing with contractors and suppliers formed under Article 78 of the Government Tenders and Procurement Law by an independent committee to consider compensation claims submitted by contractors and suppliers based on the terms of the General Construction Contract Form and other contract forms. And to amend the texts of Articles (54 and 78) of the Rules accordingly.

Only Allah leads to prosperity