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Contract Management

On ADB Funded Projects

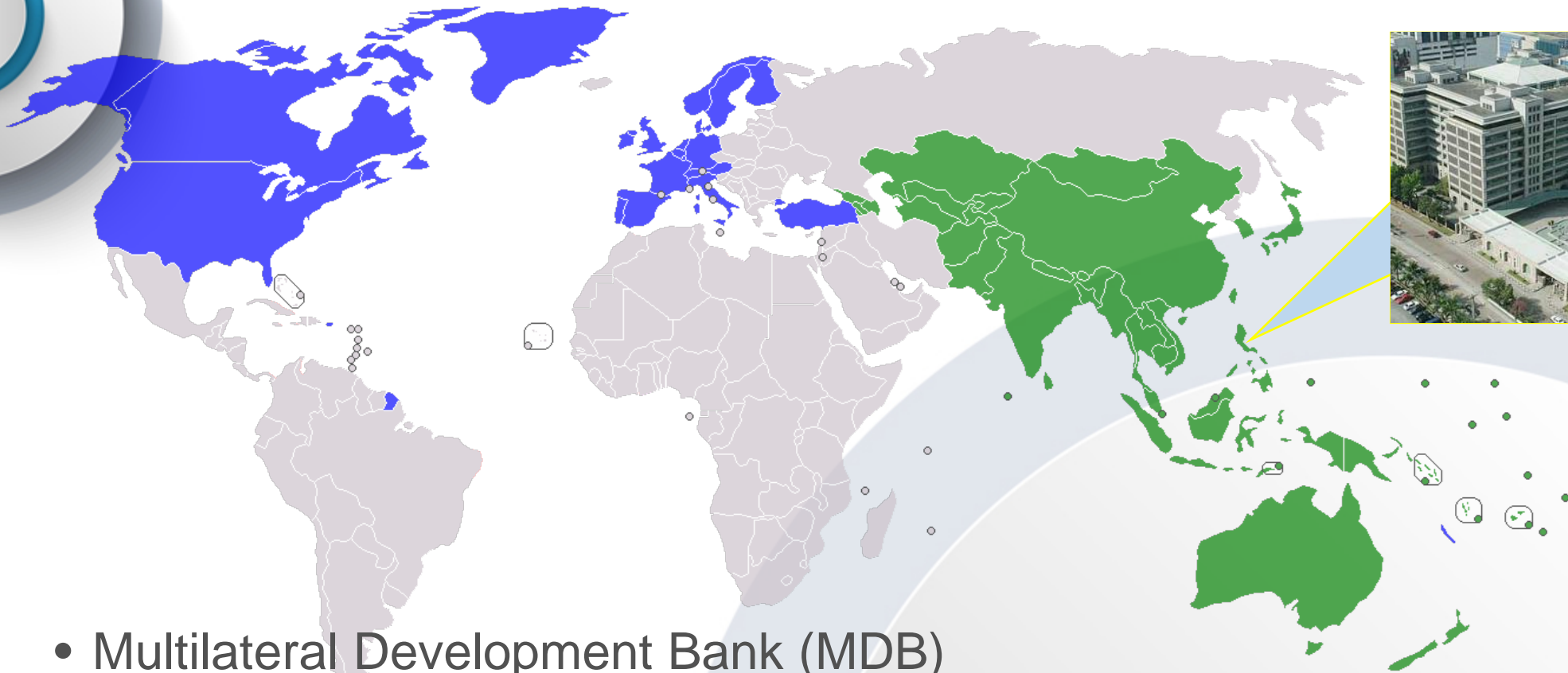


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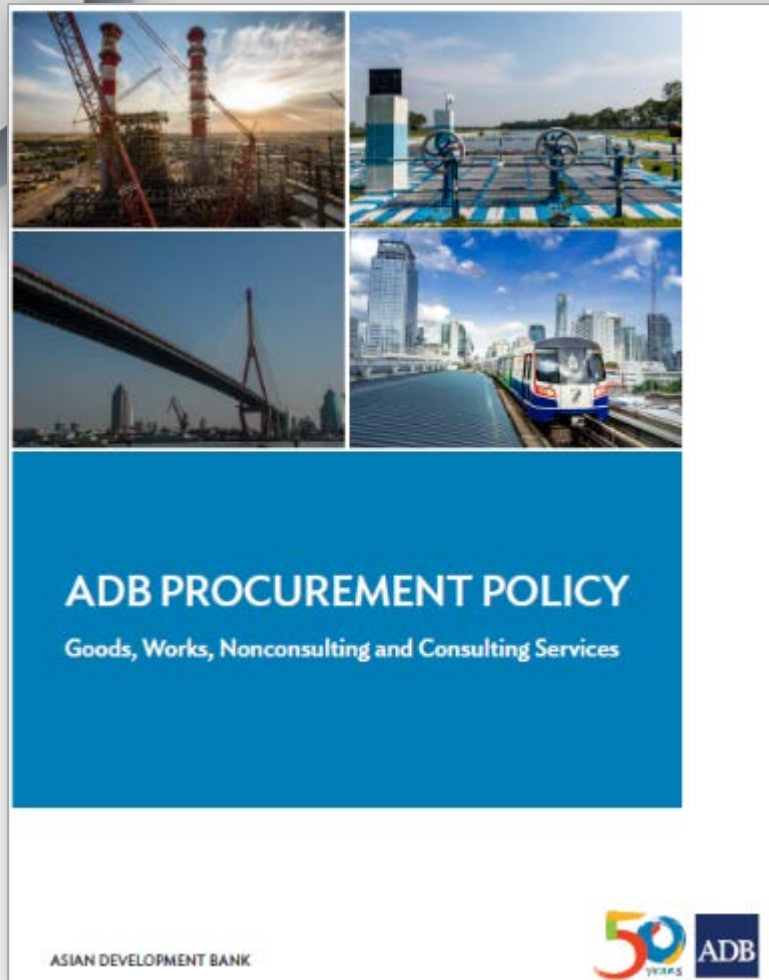
Asian Development Bank (ADB)



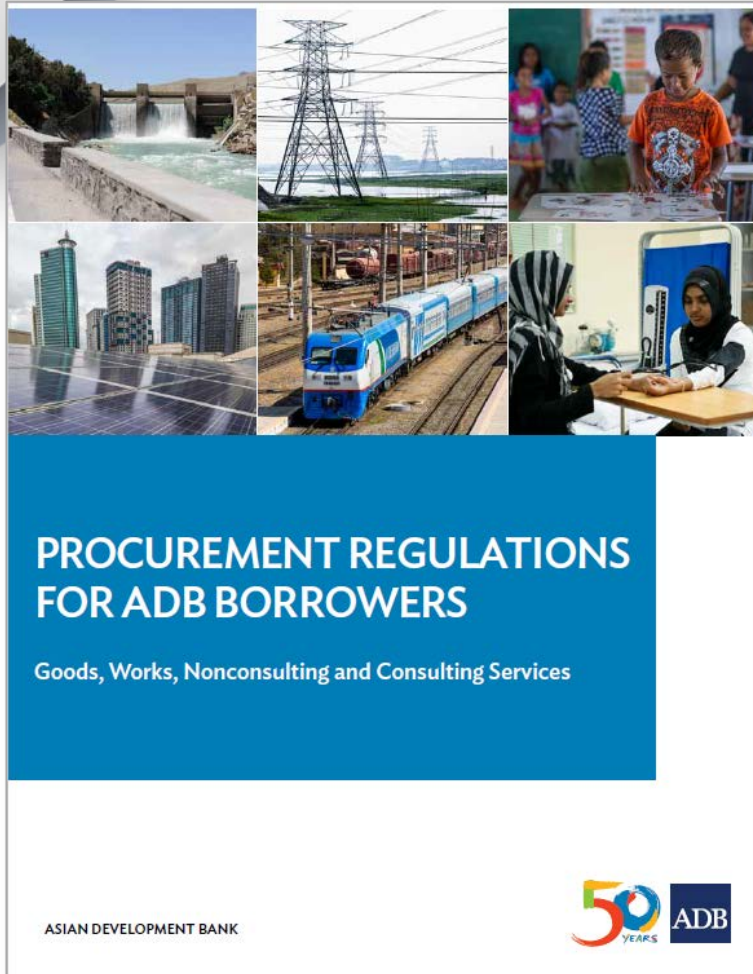
- Multilateral Development Bank (MDB)
- 68 member countries, 49 from the Asia & Pacific, 19 non-regional
- Headquarter in Manila, Philippines, and 40 Field Offices
- 3,500+ staffs from 60 nationalities

ADB Procurement Policy

- Approved by ADB Board of Directors, representing member countries of ADB
- Core procurement principles
- Required for project financed by ADB



ADB Procurement Regulations



- Issued by ADB President
- Details of policies, procedures
- Prior review or Post review
- International best practices



ADB Procurement Regulations – Contents

- **Introduction**

Purpose; General Considerations; Fitness for Purpose; Alternative Procurement Arrangements; Applicability of These Regulations; Procurement of Contracts Not Financed by the Asian Development Bank; Eligibility; Conflict of Interest; Unfair Competitive Advantage; Advance Contracting and Retroactive Financing; Asian Development Bank Review; Noncompliance, Complaints; Integrity; E-procurement; Procurement Plan. Procurement for Non sovereign Operations

- **Procurement Methods and Arrangements**

Open Competitive Bidding; Limited Competitive Bidding; Framework Agreements; Request for Quotations; Electronic Reverse Auction; Direct Contracting; Force Account; Particular Types of Procurement Arrangements (Selection of Consultants, Selection of Individual Consultants, Procurement from Specialized Agencies, Procurement in Fragile and Conflict-Affected Situations, Procurement Agent, Support to Governments for Public–Private Partnerships, Procurement of High-Level Technology, Performance-Based Procurement, Community Participation in Procurement, Procurement under Loans Guaranteed by the Asian Development Bank)

- **Appendices**

*1. Value for Money; 2. Procurement Planning; 3. Open Competitive Bidding Procedure; 4. Consulting Services Selection using Open Competitive Bidding; 5. Evaluation Criteria and Methodology; 6. ADB Review of Procurement Decisions; 7. Bidding-Related Complaints; 8. **Contract Management**; 9. Roles and Responsibilities in ADB-Financed Projects*

Guidance Notes

- To operationalize ADB Procurement policy and Regulations.
- Grouped based on themes



GUIDANCE NOTES

Preparation and Planning	Procurement Methods	Bidding Procedures	New Principles and Practices	Complaints, Compliance, and Eligibility	Specialized Areas
<ul style="list-style-type: none"> • Procurement Risk Framework • Strategic Procurement Planning • Procurement Review • Alternative Procurement Arrangements 	<ul style="list-style-type: none"> • Open Competitive Bidding • Consulting Services Administered by ADB Borrowers • Non-consulting Services Administered by ADB Borrowers • Framework Agreements 	<ul style="list-style-type: none"> • Price Adjustment • Prequalification • Subcontracting • Domestic Preference 	<ul style="list-style-type: none"> • Value for Money • Quality • Contract Management • Abnormally Low Bids 	<ul style="list-style-type: none"> • Bidding-Related Complaints • Noncompliance in Procurement • Standstill Period • State-Owned Enterprises 	<ul style="list-style-type: none"> • Fragile, Conflict-Affected, and Emergency Situations • E-Procurement • Public-Private Partnerships • High-Level Technology • Sustainable Public Procurement • Use of Merit Point Criteria for Bid Evaluation

OBJECTIVES



Increase Efficiency and Reduce Procurement Time

- Preparing, from the onset, a contract management strategy and mobilizing the relevant resources for it.
- Supporting ongoing monitoring of the contractor's performance.
- Operating a robust contract administration system, including maintaining a
- robust record management system.



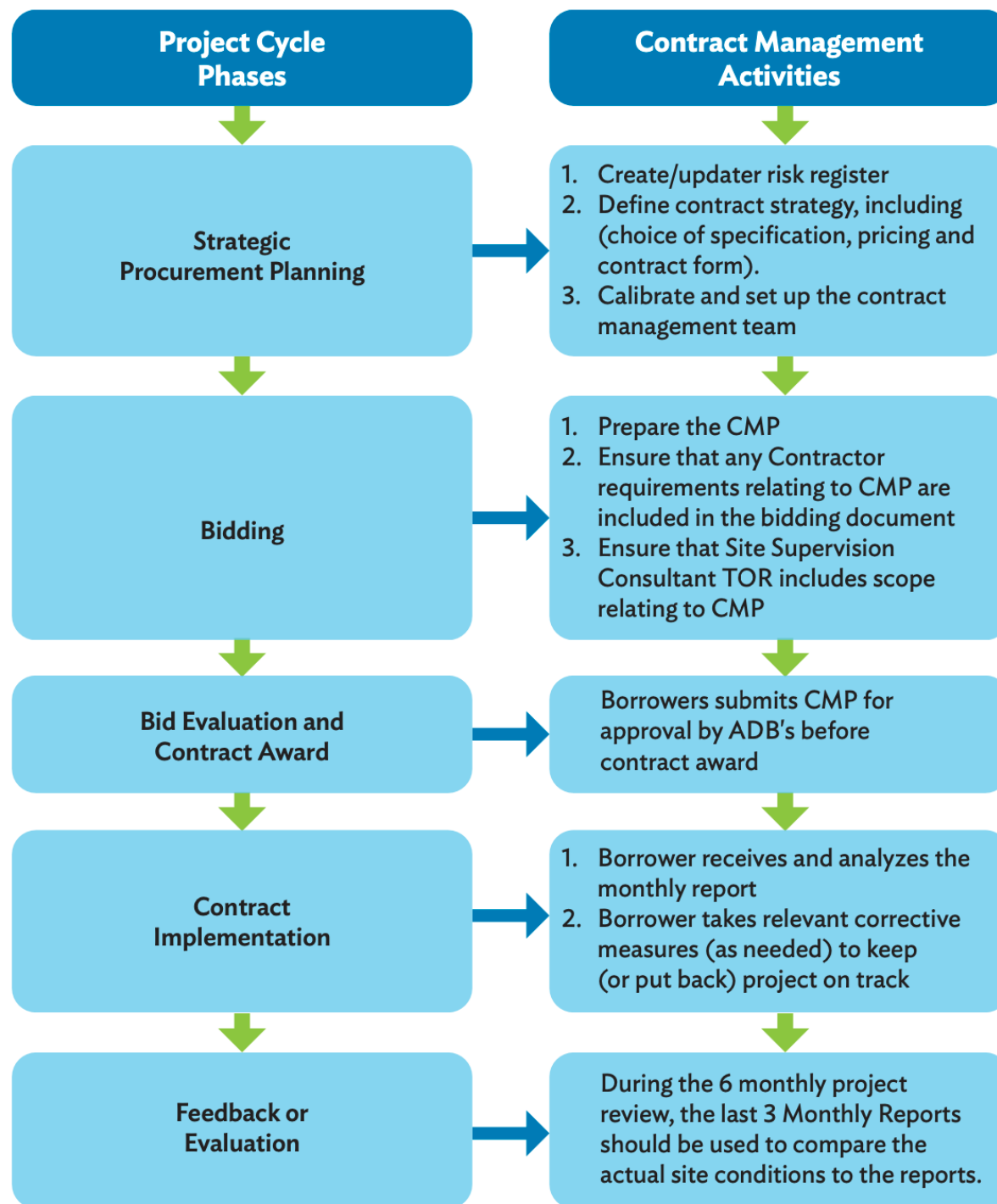
Reduce Risk

- Anticipating what could go wrong, e.g., payment delays, right of access to site.
- Putting in place mitigation measures to address any identified risks.
- Managing the closure of the project, ensuring that no pending issues or
- obligations remain unaddressed.



Deliver Value for Money

- Through the contractor meeting requirements of the project.
- Completing the project on time or earlier.
- Complying with applicable legislation.



Components of Contract Management Plan (1)

Section 1: Permits, Licenses and Approvals

Section 2: Contract Start-up Activities and Submittals

Section 3: Risk Management

Section 4: Program Monitoring

Section 5: Change Management

Section 6: Financial Management

Section 7: Disputes

Components of Contract Management Plan (2)

Section 8: Environment, Social, Health & Safety and Security related Obligations

Section 9: Completion of work and contract closure activities

Section 10: Recent Photographs of Site Activities

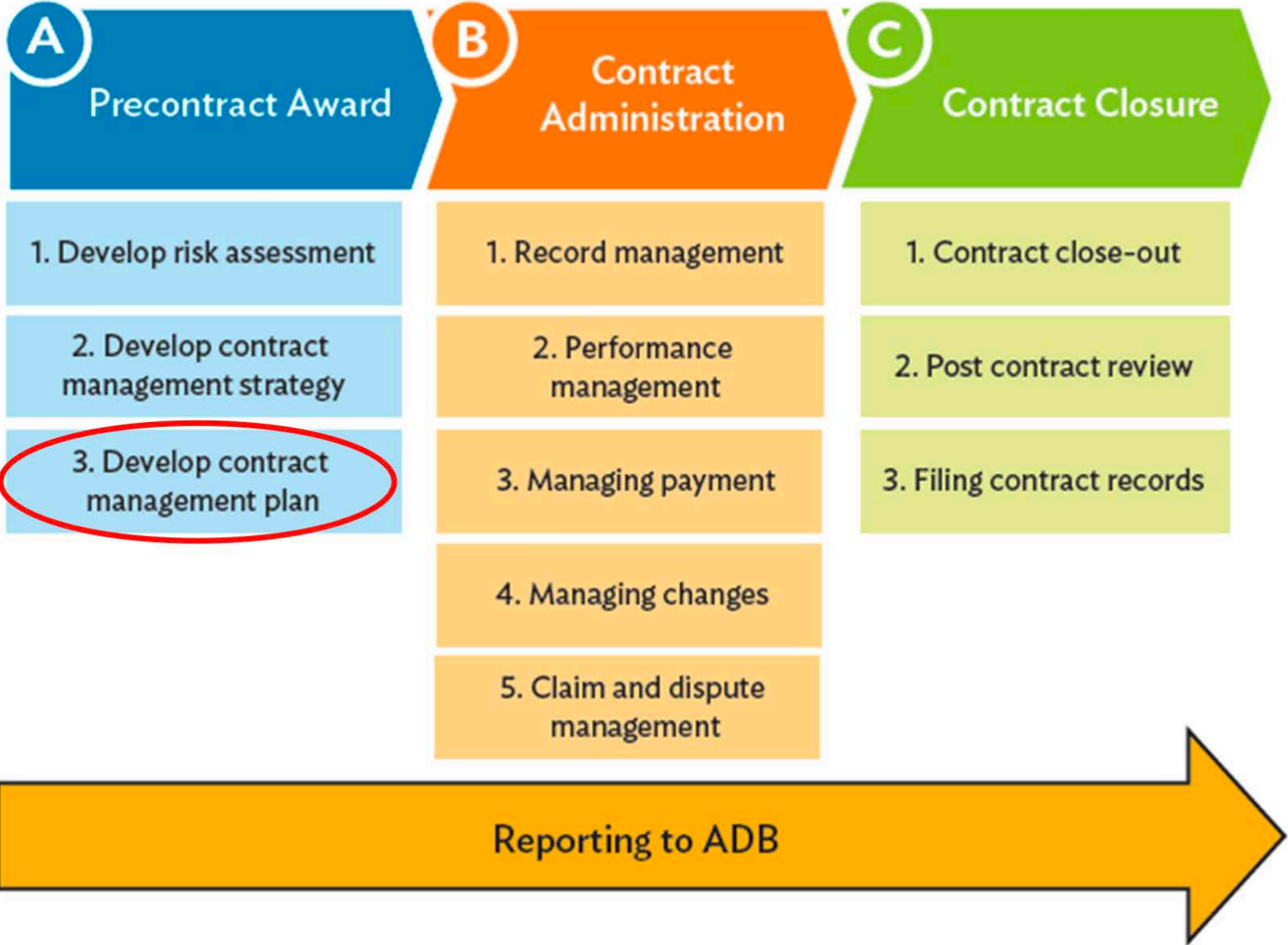
Description of Part B (Contract Key Data/Information) of the Contract Management Plan

Section 1: Contract Details

Section 2: Communications and Reporting

Section 3: Securities and Insurances

The Contract Management process





Typical Contract Management Issues



For Works Plants & Related Services

- Misuse of mobilization advance by the contractor for purposes not related to contract.
- Delays in handing over possession of an encumbrance-free site.
- Resettlement issues or local disturbances at site.
- Non-submission of work program.
- Delay in submission of insurance documents.
- Late or non-submission of a quality assurance plan.
- The whole contract is unofficially sold/sub-let to another unskilled contractor who has no capacity to manage the contract.



For Works Plants & Related Services (2)

- Use of unauthorized sub-contractors.
- Delay in procurement of construction materials by the contractor due to non-availability of materials or a sudden increase in price of materials in the market.
- Delay in mobilization of key personnel and equipment.
- Poor quality or non-conformance of deliverables produced by contractor.
- Lack of proper pre- or post-delivery inspection of goods.
- Non-payment by contractors to subcontractors or material suppliers.
- Non-compliance with environmental protection measures and safety rules.
- Non-submission of technical test reports.



For Works Plants & Related Services (3)

- Lack of communication, non-submission of monthly progress reports.
- Variations and extension of time are granted without justification.
- Disagreement on claims or rates of new items.
- Incomplete or delayed submission/processing of contract variation requests.
- Late processing of interim billing and final payments by the borrower.
- Delay in defects correction.
- Improper application of contractual termination provisions.
- Delays in actioning dispute resolution mechanism (e.g., dispute adjudication board).



CMP Forms & Templates



Table 1. Contract Details and Key Dates

Employer name	
Contractor name	
Contract title	
Contract Number	
Accepted Contract Amount (Currency/ies)	
Date of Issuance of Letter of Acceptance	
Commencement Date	
Sections (Yes/No). If yes provide details.	
Time for Completion (days)	
Defects Liability Period (days)	
Location of the Site	
ADB loan number and title	

¹⁸ Under the FIDIC contract MDB Harmonized Edition (June 2010), changes may however occur to the performance security during the contract implementation period since the contract conditions (sub-clause 4.2) provide that its amount should be increased or decreased whenever the contract price increase or decrease by more than 25% due to a change in cost (price adjustment), change in legislation or a variation.

ADB Loan Effectiveness Date	<i>[insert effectiveness date of ADB loan/grant]</i>
ADB Loan Closing Date	<i>[insert closing date of ADB loan/grant]</i>



Table 1: List of Permits, Licences and Approvals

Application type	Relevant law or regulation	Responsible Party	Approving Authority	Due / Planned Date	Actual Date	Validity Period	Current status Comment
		[Employer]					
		[Contractor]					

Table 2.1: LARP processing (in case of sectional approach)

Section Definition	Implementation status / payment of compensation to affected persons	Clearance of LARP Compliance report		Comments
		Due Date	Actual Date	

Table 2.2: Contract Start-up Activities

Clause (*)	Action	Responsible	Due Date	Actual Date	Comment
	Residual Tender Stage Actions				
ITB 42.1	Issuance of Letter of Acceptance (LoA)	Employer			
ITB 19.6	Return Bid Security to Contractor	Employer			
ITB 43.2	Contract Agreement Signature	Employer & Contractor			



Clause (*)	Action	Responsible	Due Date	Actual Date	Comment
Contract Requirements					
GCC 4.2	Provision of Performance Security (PS)	Contractor			Include expiry date of the PS
GCC 2.4	Evidence of the Employer's Financial Arrangements	Employer			
GCC 4.13	Effective Access to and Possession of the Site	Employer			
GCC 14.2	Provision of Advance Payment Guarantee (APG)	Contractor			Include expiry date of the APG
GCC 14.2 and 14.6	Submission and certification of application for Advance Payment	Contractor			
GCC 14.7	Payment of Advance Payment	Employer			
PCC 4.18	Preparation and submission of the Construction/Contractor's Environmental Management Plan (CEMP), including the Health and Safety management plan.	Contractor			
GCC 8.1	Notice of Commencement Date	Engineer			
Contract Activities required within 28 days of Commencement Date					
GCC 8.3	Submission of Detailed Program	Contractor			
GCC 18.1	Provision of Insurances (See Section 6)	Contractor			
GCC 20.2	Appointment of Dispute Board and signature of the Dispute Agreement(s) by the parties	Employer & Contractor			
	[insert any other start-up related obligations added for the particular contract]				

(*) All ITB references correspond to Section 1 of ADB Standard Bidding Document from the User's Guide to Procurement of Works (June 2018) and GCC/PCC correspond to FIDIC contract MDB Harmonized Edition (June 2010)



Table 2.3: Mobilization Activities

Clause (*)	Action	Reference	Scheduled Date	Actual Date	Variance
4.22/6.6	Establishment of Site boundaries, compound, offices etc.	Program			
1.1.5.1/4.17	Mobilization of Contractor's Equipment	Program			
1.1.2.7/6.9	Mobilization of Contractors Personnel	Program			

(*) All ITB references correspond to Section 1 of ADB Standard Bidding Document for Works (June 2018) and GCC/PCC correspond to FIDIC contract MDB Harmonized Edition (June 2010)



Table 2.1: Contact Details

Ref	Name	Title	Position	Phone	Email
Executing Agency: [INSERT NAME]					
1.			Employer		
2.					
Implementing Agency [INSERT NAME] and PMU					
3.					
4.					
Contractor: [INSERT NAME]					
5.			Contractor's Representative		
6.			H&S Officer		
Engineer [inset relevant position depending on contract terms]: [INSERT NAME]					
7.			Engineer's Representative		
8.			Other personnel (specify delegated authority)		
ADB: [INSERT ADB HQ or other ADB office overseeing project]					
9.			Project Team Lead		
10.			Other officers (specify their role)		
Dispute Board Members					
11.					
12.					
13.					
Other [e.g. Co-financing Partners etc]					
14.					
15.					



Table 2.2: Meeting Schedule

Meeting	Chair ¹	Attendees ¹⁹	Frequency	Last meeting	Next meeting
Executive meeting	[e.g. 3]	[e.g. 4, 5, 8, 11, etc.]	[e.g. every six months or as required]	[insert date]	[insert date]
Management meeting			[e.g. every quarter or as required]	[insert date]	[insert date]
Operations meeting			[e.g. every month]	[insert date]	[insert date]
Site Meetings				[insert date]	[insert date]
Community / stakeholder meeting		[e.g. as per project's CCP]	[e.g. as per project's CCP]	[insert date]	[insert date]
ADB Oversight meeting			[e.g. every Quarter]	[insert date]	[insert date]

Table 2.3: Reporting Schedule

Report Type	Circulation ¹	Responsible	Frequency	Last Report (due date)	Last Report (date issued)	Next Report (due date)
[Construction Progress Report]	[e.g. 4, 5, 8, 11, etc.]	[Contractor]	[e.g. monthly]	[insert date]	[insert date]	[insert date]
[Progress Report]		[IA/PMU]		[insert date]	[insert date]	[insert date]
[Semi-annual Safeguards Monitoring Report]		[IA/PMU]		[insert date]	[insert date]	[insert date]



Table 3.1: Guarantees and Security – Main Details

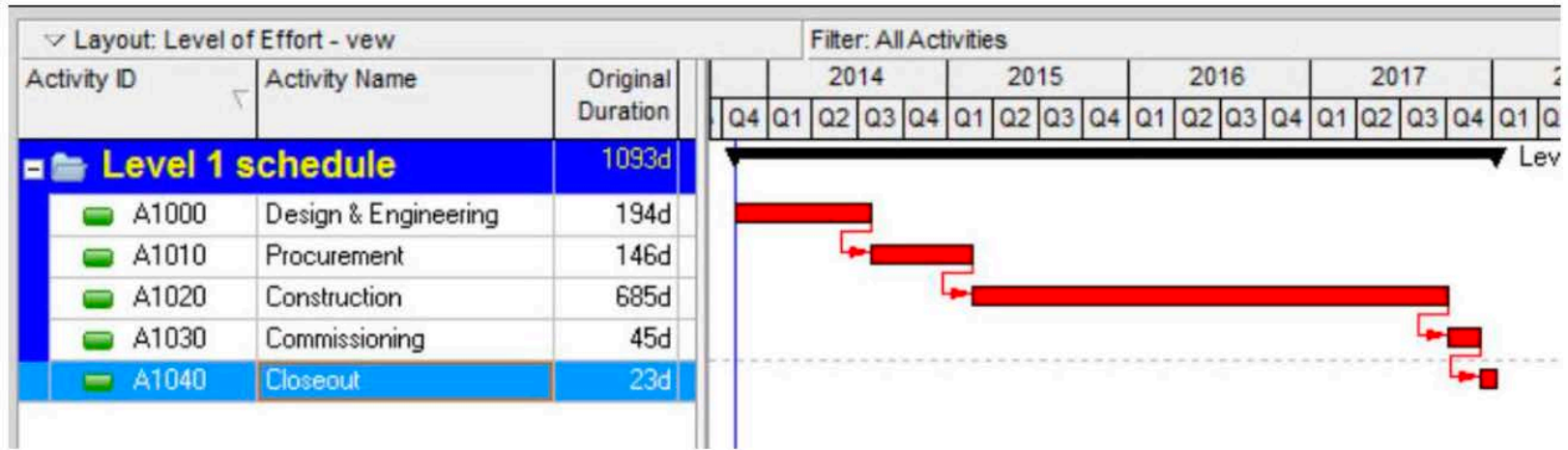
Security type	Advance Payment Guarantee	Performance Security	Retention Guarantee (if applicable)
Contract Clause, if relevant	14.2	4.2	-
Name of Bank			
Correspondent Bank, if applicable			
Amount of security [currency]			
Date to be received	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>
Date actually received	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>
Expiry date	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>
Date 28 days prior to expiry	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>	<i>dd/mm/yyyy</i>

4.3.3.2 Insurances

Table 3.2: Insurance details

Insurance type	Works and Contractor's Equipment	Third Party Insurance	Contractors Personnel
Contract Clause	18.2	18.3	18.4
Insurer			
Policy no.			
Amount of Insurance			
Date to be received	<i>[dd/mm/yy]</i>	<i>[dd/mm/yy]</i>	<i>[dd/mm/yy]</i>
Date actually received	<i>[dd/mm/yy]</i>	<i>[dd/mm/yy]</i>	<i>[dd/mm/yy]</i>
Expiry date	<i>[dd/mm/yy]</i>	<i>[dd/mm/yy]</i>	<i>[dd/mm/yy]</i>

Sample level 1 program



Sample level 2 program

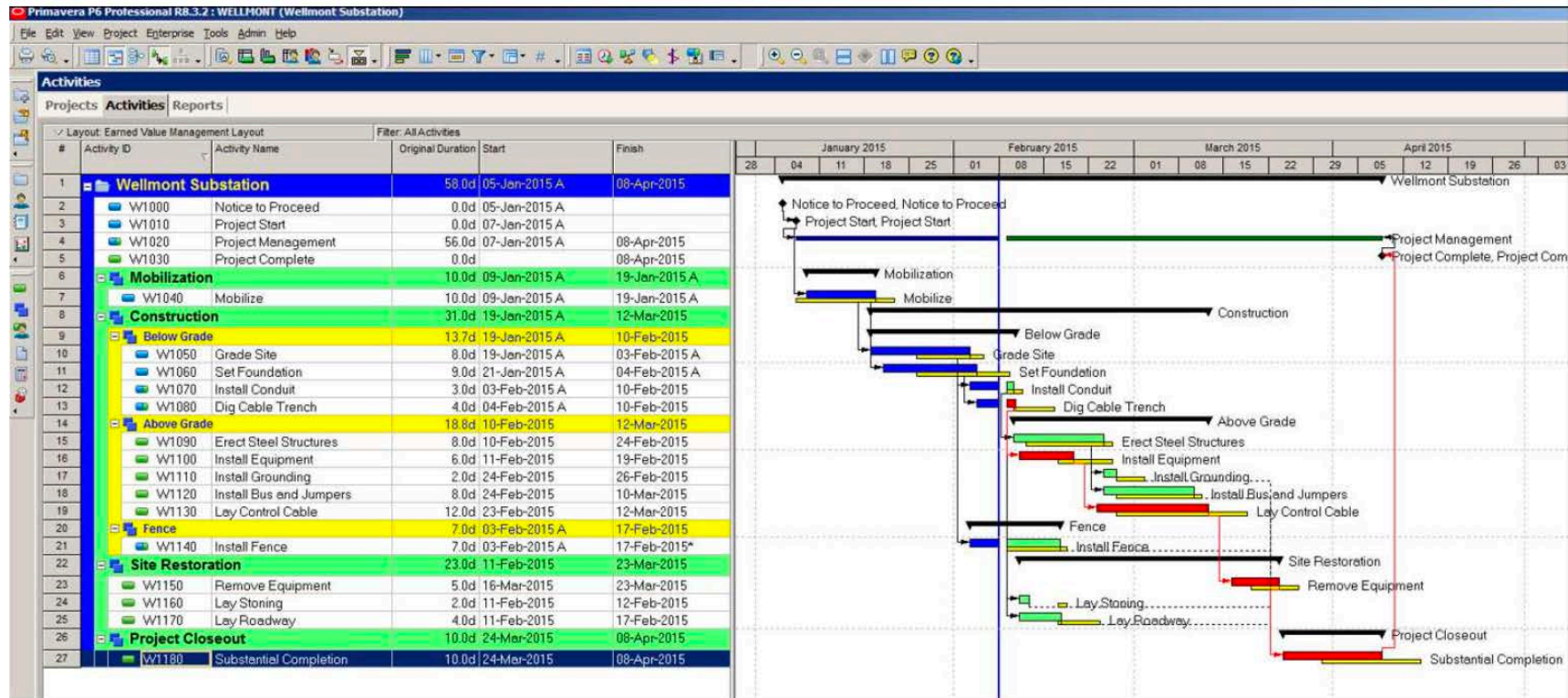




Table 5.1.2: Variation Register

Variation Ref	Variation description	Date instruction Issued	Estimated Variation Cost	Prior Contract Price	Estimated Contract Price	Current Status
[insert]	[insert text]	[dd/mm/yy]				

Table 5.2.2: Claim Register

Claim Ref	Description	Claimed Amount	Submission of Notice of Claim	Submission of fully detailed claim	Status to Date	Amount Certified
[insert]	<i>Causal event, EOT claimed, Cost/Profit claimed</i>	[Amount]	[dd/mm/yy]	[dd/mm/yy]	[e.g. in progress / agreed / rejected]	[Amount]

Table 6.2: Payment Schedule

Payment Type	Application [currency]	Application Date	Certification Date (as per Contract)	Certification date (Actual)	Amount Paid [currency]	Payment Date
[e.g. Advance Payment]	[Amount]	dd/mm/yyyy	dd/mm/yyyy	dd/mm/yyyy	[Amount]	dd/mm/yyyy
[e.g. Interim Payment No.1]						
[e.g. Interim Payment No.X]						
Total payment to date	XXXX				XXXX	



Table 6.3: Evolution of Estimated Contract Price

Date (month)	Accepted Contract Amount	Impact of Remeasurement	Impact of Variation and Claims	Impact of other adjustment [e.g. change in legislation]	Impact of Disputes	Estimated contract price to date
Month 1	[Amount]	[Amount]	[Amount]	[Amount]	[Amount]	[Amount]
Month 2						
.....						

Table 7.1: Matters referred to the Dispute Board

Referral Ref	Referral Date	Description of the Dispute	Current Status of DB Procedure	Decision Date	Dissatisfaction Notice (if any)
[insert ref]	[dd/mm/yy]	Causal event, EOT claimed, Cost/Profit claimed		[dd/mm/yy]	[dd/mm/yy]

Table 7.2: Disputes referred to Arbitration

Referral Ref	Referral Date	Description of the Dispute	Current Status	Decision Date
[insert ref]	[dd/mm/yy]	Causal event, EOT Cost/Profit in dispute		[dd/mm/yy]



Table 8.1: CEMP activity Monitoring

Description of CEMP Activities	Corresponding Submittal	Due / Planned Date	Actual Date Received
COVID 19 Management Plan (re PCC 6.7)			
Description of CEMP Activities	Corresponding Submittal	Due / Planned Date	Actual Date Received
The Contractor shall take adequate safety and precautionary measures to keep workers and their families, visitors and people in contact, safe from the possible infection; provide adequate and appropriate PPE including facial covers to the workers, hand sanitizers, washing facilities in the office and residences; strictly follow the Government imposed temporary or permanent rules. It is recommended to follow the <i>Guidance Memorandum FIDIC COVID -19: On-site working and project team organization</i>			
HIV/AIDS prevention activities (re PCC 6.7) The Contractor shall conduct health and safety programs for workers employed under the project and shall include information on the trafficking of women and the risk of sexually transmitted diseases, including HIV/AIDS in such programs			
Respectful Work Environment (re PCC 6.25) The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct, and harassment including sexual harassment, and to promote a respectful work environment. <u>The Contractor shall keep an up-to-date record of its employees and Subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request</u>			



Table 8.2: Social Safeguard Monitoring

Description of Social Safeguard Activities	Corresponding Submittal	Due / Planned Date	Actual Date Received
Compensation of temporary impacts (structures, trees, income) during construction.			
Unanticipated impacts during construction (i.e., additional land requirements, unidentified land/assets owners, land borrowing, etc.)			



Table 8.3: Health and Safety Monitoring

Health & Safety Activities (incl. mobilization of resources) described in the H&S Plan	Corresponding Submittal	Due / Planned Date	Actual Date Received
Approval of Site-Specific Health & Safety Plan			
Activities described in the H&S Plan			
[e.g. toolbox briefing/training/audit of PPEs/audits of worker's permits validity for specialized or high risk work activities]			

It is expected that the submittals on Health and Safety include, as a minimum, tabular reports such as shown in the table below listing all significant incidents or accidents which occurred on site including any corrective measures decided.

On Site Health and Safety Statistics			
Current period			
Average daily manpower (including Subs)	<i>[Number-Reporting Period]</i>	<i>[Number – Total in Contract to date]</i>	<i>[Comments]</i>
Lost Time Injury (LTI _n)			
Lost Time Injury Frequency Rate (LTIFR _n)			
First Aid Injury (FAI _n)			
Medical Treatment Injury (MTI _n)			
Significant Near Misses (SNM _n)			
Total Recordable Injury Frequency Rate (TRIFR _n)			
Contract period to date			
Average daily manpower (including Subs)			
Lost Time Injury (LTI)			
Lost Time Injury Frequency Rate (LTIFR)			
First Aid Injury (FAI)			
Medical Treatment Injury (MTI)			
Significant Near Misses (SNM)			
Total recordable Injury Frequency Rate (TRIFR)			



Evolution of the security situation in the project area	Security resources		Incidents reported during previous month	Comments
	As planned in Security Plan	Actual on Site		

Table 8.5: LARP implementation monitoring and completion

Description of LARP activities	Corresponding Submittal	Due / Planned Date	Actual Date Received



Table 9: Contract Closure Activities

Clause	Action	Responsible	Due Date	Actual Date
GCC 9	Test on Completion	Contractor		
GCC 10.1	Application for a taking over certificate	Contractor		
GCC 10.1	Issuance of the Taking Over Certificate	Engineer		

Clause	Action	Responsible	Due Date	Actual Date
GCC 14.9	Certification of payment/return of 50% of the retention Money	Engineer		
GCC 14.9	(If used) issuance of a Retention Money Guarantee (RMG) for the release of the second half of the retention.	Contractor		
GCC 14.10	Statement at Completion	Contractor		
GCC 11.1	Notification of Defects	Employer	
GCC 11.1	Remedying of Defects	Contractor
GCC 11.3	End of Defects Notification Period (DNP) and extension thereof (if applicable)	Employer		
GCC 11.9	Issuance of Performance Certificate	Employer		
GCC 11.11	Clearance of Site	Contractor		
GCC 4.2	Return of Performance Security	Employer		
GCC 14.9	Payment of outstanding balance of Retention Money	Engineer		
GCC 14.9	(if an RMG is used): Return of the RMG	Employer		
GCC 14.11	Application for Final Payment Certificate	Contractor		
GCC14.12	Issuance of Final Payment Certificate	Engineer		

(*) GCC/PCC references correspond to FIDIC contract MDB Harmonized Edition (June 2010)

Risk Management Plan

Risk	Probability	Impact	Counter-Measure	Timeline	Responsible
Inexperienced project team	High	High	<ul style="list-style-type: none"> • Training for all team members • Deploying experienced consultant 	First quarter after project implementation unit is established	Borrower's Project manager
Contractor not experienced in ADB projects	Medium	High	<ul style="list-style-type: none"> • Present all details during kick-off meeting(s) • Request training of contractor's staff • Encourage contractor to hire experienced project manager 	Contract effectiveness	Borrower's Project manager Contractor's project manager
Natural disaster	Low	High	<ul style="list-style-type: none"> • Ensure that all adequate insurance policies have been contracted, paid, and maintained 	Contract effectiveness, then yearly	Contractor's Project manager
Land acquisition not fully completed in time to handover the construction sites to the Contractor	Medium	High	<ul style="list-style-type: none"> • Ensure advance actions for smooth handing over of sites to contractors as per schedule • Ensure regular meetings of coordinating / steering committee for 	Prior to contract award and thereafter continuous until site is fully handed over to the contractor	Borrower's project manager





Key Take Aways ...

- Make Workflows, SOPs, Policies, Manuals. [as per CoC]
- Prepare Templates (forms) for IPCs, TOC, PC, Testing, Submittals, RFIs etc. [as per CoC]
- Prepare the plans, understand the plans, incorporate risks, implement the plans. [as per CoC]
- Systemetic project and contract management --- “*system specific not individual specific*”.



Thank You





Presenter's Notes



14.7 Payment

The Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

Contract Agreement

THIS AGREEMENT made the [date] day of [month], [year], between [name of the Employer] (hereinafter "the Employer"), of the one part, and [name of the contractor] (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as [name of the contract] should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein.

The Employer and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (a) Contract Agreement,
 - (b) Letter of Acceptance,
 - (c) Letter of Tender,
 - (d) Addenda Nos. [insert addenda numbers if any],
 - (e) Particular Conditions of Contract – Part A,
 - (f) Particular Conditions of Contract – Part B,
 - (g) List of Eligible Countries that was specified in Section 5 of the Bidding Document,
 - (h) Document,
 - (i) General Conditions of Contract,
 - (j) Specifications,
 - (k) Drawings,
 - (l) completed Schedules including Bill of Quantities, and
 - (m) any other documents shall be added here, such as Initial Environmental Examination, Environmental Management Plan, Environmental Assessment and Review Framework and Land Acquisition, SSEMP and Land Acquisition and Resettlement Plan as well as Tables of Adjustment Data, JV agreement, in case of JV Bidder/Contractor, is to be made part of the Contract besides the Performance Security as well as Forms of Advance Payment Security and Indemnity Bond for Secured Advance against Materials (where applicable), etc
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of [name of the borrowing country] on the day, month and year indicated above.

Signed by

(Name and Designation)

for and on behalf of the Employer
in the presence of

Witness, Name, Signature, Address, Date

Signed by

(Name and Designation)

for and on behalf the Contractor
in the presence of

Witness, Name, Signature, Address, Date



14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

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Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.



16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.



16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].