

NOTE FOR PUBLIC WORKS SUBCOMMITTEE OF FINANCE COMMITTEE

Supplementary Information on 61BL – Inspection of buried water mains affecting slopes – second five-year cycle inspection

INTRODUCTION

In considering PWSC(2001-02)22 on **61BL** “Inspection of buried water mains affecting slopes – second five-year cycle inspection” at the Public Works Subcommittee meeting held on 16 May 2001, the Administration undertook to provide supplementary information on the relevant liability clauses to be included in the consultancy agreement and works contract for the proposed works. The terms of contract concerning the liability of the consultants and the contractor to be employed for the inspection and leakage detection of buried public water mains affecting slopes are briefly summarized in the following paragraphs.

Liability of the Consultants

2. Water Supplies Department (WSD) will engage engineering consultants to investigate and propose a cost-effective programme for the inspection and leakage detection of buried public water mains affecting slopes and to administer/supervise its implementation. We will apply the standard conditions in the General Conditions of Employment of Engineering and Associated Consultants for an Investigation Assignment (GCE) to ensure that the consultants will achieve the required standard.

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3. We will closely monitor the performance of the consultants. In the event of any errors or omissions for which the consultants are responsible and as a result of which re-execution of the assignment work is required, the consultants shall at their own cost re-execute such assignment work to the satisfaction of WSD. In addition, the consultants are required to maintain a minimum insurance cover of twice the lump sum fee for the period from the commencement of the consultancy up to six years from the completion of the work under the assignment in order to meet any claims that may be made by WSD or third parties in respect of any negligence in or about the conduct of and performance by the consultants, their staff or agents.

4. The standard clauses in the GCE relating to the liability of the consultants are reproduced in Enclosure 1.

Liability of the Contractor

5. WSD will employ a contractor to carry out the leakage detection and related survey and to report on the findings. We will apply the standard conditions in the General Conditions of Contract (GCC) and the General Specification for Civil Engineering Works to ensure that the contractor will achieve the required standard.

6. The contractor will be obliged to execute the leakage detection work in strict accordance with the contract to the satisfaction of the consultants, who will serve as the Engineer for the contract, and must comply with the Engineer's instructions on any matters related to the contract. The Engineer will closely monitor the progress of work and the quality of workmanship of the contractor. If the leakage detection work fails to meet the required standard, the Engineer shall have the power to deduct from any payment certificate the value of any work which is not carried out to the satisfaction of the Engineer. WSD will also spot check the contractor's work. Moreover, a certain portion of the certified value of the work will be retained until the end of the maintenance period as a security on WSD against possible breaches or failures of the contractor.

7. The standard clauses in the GCC relating to the liability of the contractor are reproduced in Enclosure 2.

Works Bureau
June 2001

Liability of the Consultants

The following standard clauses relating to the liability of the consultants employed to undertake the assignment works under **61BL** are extracted from the General Conditions of Employment of Engineering and Associated Consultants for an Investigation Assignment (1997 Edition).

Clause 22 (D) - Care and Diligence

In the event of any errors or omissions for which the Consultants are responsible and as a result of which the re-execution of the Services is required, the Consultants shall, without relieving any liability and obligation under the Agreement, at their own cost re-execute such Services to the satisfaction of the Director's Representative.

Clause 47 (A) - Insurance

Without limiting their obligations and responsibilities nor their liability to indemnify the Employer under Clause 22 the Consultants shall, as from the date of commencement of this Agreement, and thereafter, maintain a minimum insurance cover of an amount as defined in the Brief to meet any claims that may be made by the Employer in respect of any negligence in or about the conduct of and performance by the Consultants, their servants and agents of all and singular the Services. The Consultants shall use their best endeavors to maintain the said cover for a period of six years from completion of the works under the Assignment. Either in the same policy or additionally, the Consultants shall maintain sufficient insurance, for the like period, as would properly protect the Consultants against any claims by third parties in respect of the performance of the Services by the Consultants.

Liability of the Contractor

The following standard clauses relating to the liability of the contractor employed to undertake the leakage detection works under **61BL** are extracted from the General Conditions of Contract for Civil Engineering Works (1999 Edition).

Clause 15 - Works to be to the Satisfaction of the Engineer

Save in so far as it is legally or physically impossible the Contractor shall execute the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions on any matter related to the Contract whether mentioned in the Contract or not.

Clause 79 - Interim and Final Payments, Retention Money and Interest

Clause 79(1)

Within 21 days (unless otherwise stated in the Contract) of the date of delivery to the Engineer of the Contractor's statement in accordance with Clause 78, the Engineer shall value and certify and within a further 21 days the Employer shall pay to the Contractor after deducting previous payments on account (if any) and any other sum deductible by the Employer under the Contract the sum which in the opinion of the Engineer is due, based on the rates in the Contract where appropriate, in respect of the following:

- (a) the estimated value of the permanent work executed, and
- (b) the estimated value of any Temporary Works or preliminary item for which a separate sum is provided in the Bills of Quantities, and
- (c) the estimated value of materials for inclusion in the permanent work and not being prematurely delivered to and being properly stored on the Site, and
- (d) the estimated sums payable in respect of Nominated Sub-contractors, and
- (e) any other estimated sum to which, in the opinion of the Engineer, the Contractor is entitled in accordance with the Contract.

Clause 79(1) (cont'd)

Provided that the total certified sum shall be adjusted by the Engineer to take into account:

- (i) the retention of the percentage stated in the Contract until the sum retained reaches the limit of Retention Money stated in the Contract; and
- (ii) any adjustment to be made for fluctuations in the cost of labour and materials in accordance with Clause 89.

Provided further that, for the purpose of interim payments, the value of the materials as referred to in (c) above for use in connection with any item of permanent work priced in the Contract shall be determined on the basis of the rate set out in the Contract for such work.

Clause 79(5)

The Engineer shall have the power to omit from any certificate the value for any work done, materials supplied or services rendered with which the Engineer may for the time being be dissatisfied and for that purpose, or for any other reason which to the Engineer may seem proper, may by any certificate delete, correct or modify any sum previously certified by him.