

Hi,

We thank you for using TRaCRs_basic, part of the TRaCRs© tools developed by AfiTaC. Please find herewith your report:

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Your project: typical World Bank financed project for PLANT

TRaCRs© Questions & Answers

(first line Question, second line Answer; third line Comment):

Type of Customer (Employer/Owner)

0 Government owned utility financed by multilateral development bank.

Typical case: a national utility having financing from the World Bank

Type of contract

0 Well-balanced, well-known contract standard (like World Bank).

Standard Procurement Document (SPD) for Plant prepared by the World Bank

Prices are (firm vs escalation)

2 Subject to price escalation formula with indexes and weights defined by Contractor.

Search Word: Price Adjustment

Appendix 2

Usually WB financed projects have price adjustment formulae where the Contractor can propose the indexes and the weights in its bid. This is then incorporated in an appendix to the SCC.

Payment terms are (Terms of Payment, Payment Security)

4 Bad (very negative cash flow; major payments after fulfilment of contract only but with payment guarantee.

Search Word: Payment

Typically:

10% advance payment

80% on shipment

10% on acceptance

Comment: unless a substantial amount of intermediate shipments can be made and the price can be front-loaded on initial shipments, these payment terms are, unfortunately, not good. We have recently made this point to the WB Procurement Officer who is favorable to allowing a higher advance payments in business requiring high capital investment (like the Hydro business)

Variation Orders (scope, prior agreement)

3 Contractor is obliged to proceed with variation orders without prior agreement but only up to a maximum of 15% of contract amount.

Search Word: Change

Clause 39.2

"Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties ..."

Bank guarantees (amount, rating clause)

2 Performance Bond 15% or less, Warranty Bond 7.5% or less; no rating clause no revolving bank guarantees.

PCC 13.3.3 The Performance Security shall not be reduced on the date of the Operational Acceptance.

Comment: typically, the performance bond is 10%; we are here in a case between 1 and 2 because of the non-reduction and therefore selected answer 2

Customer bears risk for (Employer's risk/data/FM/Site Risks)

0 Contractor receives compensation for any mistake in Customer's specification, for delays by authorities, for force majeure and for site risks.

Compensation received for (Claims/Extension of Time etc)

0 Full price relief (cost + overhead & margin) for all disruptive events not under the control of the Contractor.

Search Word: claim

Clause 45: Contractor's Claim

Subcontractor/Supplier selection freedom

1 Worldwide sourcing allowed with few excluded origins; Customer approval only required for major subcontractors/suppliers (representing >10% of contract amount).

Search Word: subcontract

Clause 19

"The Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. "

Currency risk

1 Price is in Contractor's own currency + suppliers/subcontractors from various currencies but with alternatives in different currencies. Bid validity < 3 months.

Comment: we choose reply with risk level 1 here even if the bid validity is often 6 months. In WB tenders, multicurrency bids are allowed which enables the Contractor to set-up a natural hedging between his prices and his costs (proportion of each currency in the price corresponds to proportion of costs). He is therefore less exposed to longer validity periods.

Fiscal Risk (double taxation, transfer of title, payment of import taxes)

1 Contract split into on- and offshore portions and tax treaty in force; title transfer before importation; import taxes by Customer.

Search Word: Ownership, customs clearance, import duties

Clause 14.2, Clause 21.4, Clause 31

Comment: selection between reply 1 and 2 depends on the existence of a tax treaty between the country of the Contractor and the country of the Project

Taking-Over / Provisional Acceptance ("deemed taking-over")

2 Taking-over criteria under Contractor's control but more complicated to reach; Customer cannot use the project before taking-over; no taking-over but extension of time in case taking-over tests cannot take place for reasons not attributable to Contractor ("deemed" acceptance).

Search Word

Clause 25

Delay and Performance LDs (Liquidated Damages)

1 Delay and Perf LD rates are reasonable; Delay LD and Perf LD cap each 10% or less and aggregate LD cap 15%; sole and exclusive remedy.

Search Words: liquidated damages, Functional Guarantee

Clause 26 + Clause 28

Comment: the standard WB conditions do not establish the level of the caps; we have therefore assumed a reasonable solution often observed

Limit of Liability (exceptions/"carve outs")

2 Between 75% and 100% of contract amount; carve-out includes ones above and third party indemnities.

Search Word: Limitation of Liability

Clause 30

Comment: the carve-outs are "repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement"

Special, indirect and consequential damages

0 Such damages are excluded; loss of revenue, loss of contract, etc are explicitly excluded; no carve-outs/exclusions.

Search Word: Limitation of Liability

Clause 30

Contractor's suspension rights

0 Contractor can suspend the works in case of material non-fulfilment by Customer of its responsibilities (overdue payment, insurance, access to site etc).

Search Word: Suspension

Clause 41.2

Contractor's termination rights

1 Contractor can terminate the contract in case of non-fulfilment of a material Customer obligation and receives full compensation for the works completed + demobilisation + cancellation fee.

Search Word: Termination

Clause 42.3 : Termination by the Contractor

Customer's termination rights

2 Customer can terminate the Contractor for material breach by Contractor; compensation only for extra cost to complete.

Search Word: Termination

Clause 42.2 Termination for Contractor's Default

Contract Law and Dispute Resolution

2 Contract law from Customer's country but dispute resolution in neutral court or international arbitration in neutral venue.

Search Words: Dispute and Arbitration

Comment: public utilities often are obliged to sign contracts with their own law as contract law but accept ICC or Uncitral arbitration in a neutral venue.

Warranty (period, "evergreen")

1 Warranty period of 2 years; extension only for outage period (as in World Bank conditions).

Search Word: Defect Liability

Clause 27.8 "If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons."

The Risk Rating for typical World Bank financed project for PLANT is: 25

A score below 30 is a project with low risk; between 30 and 50 moderate risk; above 50 high risk project.

Please note that **AfiTaC** can customize TRaCRs© so that it better corresponds to your needs and the specific risks you want to track. **AfiTaC** can also provide advice on identifying and managing the risks you face in tenders and contracts.

Please visit us on AfiTaC.com or contact us at advice@afitac.com

Best regards,

The **AfiTaC** team