

METROPOLITAN WATER SEWERAGE AND DRAINAGE BOARD

SUBMARINE OCEAN OUTFALLS PROJECT

STAGE 5 - BONDI

UNDERGROUND WORKS AND OUTFALL TUNNEL

CONTRACT NO. 6519-S

CONTRACT DOCUMENTS

VOLUME 1

Revised May 1987

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SC33. BOARD OF REVIEW

SC33.1 General

Within sixty days from the date of acceptance of tender there shall be established by the Principal and the Contractor, a Board of Review whose purpose shall be to monitor the performance of the Contract, review the engineering principles and methods employed in the execution of the Contract and, in accordance with clause SC34 of the Special Conditions of Contract, to settle disputes which may arise between the Principal and the Contractor.

The Board of Review shall meet at 3 monthly intervals or more frequently if that Board so determines.

SC33.2 Appointment of Board of Review

The Board of Review appointed in accordance with these documents shall comprise three members as follows:

- (a) One member shall be nominated by the Contractor.
- (b) One member shall be nominated by the Principal.
- (c) The third member shall be nominated jointly by the members nominated by the Contractor and the Principal.

Provided always that -

- (i) each nominated member shall have extensive knowledge of and experience in the engineering and contractual aspects of works similar in nature and extent to the Works;
- (ii) each nominated member is acceptable to both the Principal and the Contractor;
- (iii) nominated members may^{?not?} be employees or officers of either of the parties to the Contract;
- (iv) all expenses incurred in Board of Review duties by the member nominated by the Contractor shall be met by the Contractor while those incurred by the member nominated by the Principal shall be met by the Principal. In the case of the third member jointly nominated all expenses incurred in Board of Review duties shall be shared equally between the Principal and the Contractor.

SC34. SETTLEMENT OF DISPUTES (G.C.C. clause 45)

SC34.1 Settlement by Board of Review

In the case of a dispute involving a claim which is valued by the Contractor in excess of \$200,000, and in respect of which, having been dissatisfied with the decisions firstly by the Superintendent and secondly by the Principal, the Contractor has given notice to the Principal requiring that the matter at issue be referred to arbitration, prior to any process of arbitration as prescribed by

clause 45 of the General Conditions of Contract being proceeded upon the matter at issue shall be referred to the Board of Review for decision. A claim valued by the Contractor at less than \$200,000 shall only be referred to the Board of Review for decision by agreement between the Principal and the Contractor.

The aforesaid procedure shall apply to all such issues in connection with or arising out of the Contract or the carrying out of the Works, whether during the progress of the Works or after their completion and whether before or after the determination, abandonment or breach of the Contract.

Neither party to the dispute shall be legally represented at any hearing before the Board of Review. The Board of Review shall state its decision in writing, without reasons, and give notice of the same to the Principal and the Contractor in respect of every matter so referred and such decision shall be final and once accepted by the Principal and the Contractor shall be binding and shall forthwith be given effect to, as such decision shall require. If the Board of Review shall fail to give such decision for a period of three calendar months after being requested to do so, or if either the Principal or the Contractor is dissatisfied with any such decision of the Board of Review, then, and in any such case, either the Principal or the Contractor may within three calendar months after receiving notice of such decision, or within three calendar months after the expiration of the said period of three months during which the Board of Review should have given its decision, direct that the matter be referred to an arbitrator appointed in accordance with clause 45 of the General Conditions of Contract.

No decision given by the Board of Review in accordance with the foregoing provisions shall disqualify members of the Board of Review from being called as witnesses and giving evidence before an arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

SC34.2 Arbitration

Arbitration on disputes will not commence until after the completion or practical completion of the Works unless the dispute relates to the withholding by the Superintendent of any certificate or of any portion of the retention money (under clauses 5 and 42 of the General Conditions of Contract) to which the Contractor claims to be entitled, or relates to the exercise of the Principal's power to take action under sub-clause 44.1 of the General Conditions of Contract, or unless the written consent of both the Principal and the Contractor is secured.

Upon every and any submission to arbitration the costs of, and incidental to, the submission and award shall be at the discretion of the arbitrator who may determine the amount thereof or may direct that the costs be taxed by a proper officer of the court. The arbitrator shall direct by whom, in what proportion, and in what manner costs shall be paid.

SC34.3 Contractor to Proceed with the Works

The Contractor shall proceed with the Works with all due diligence whether or not disputes arise or are decided to the dissatisfaction of the Contractor and whether or not issues are under review by the Superintendent, the Principal, the Board of Review, an arbitrator or any court.

SC35. MAKE-UP OF TENDER TO BE LODGED IN SAFE CUSTODY

SC35.1 General

Following notification of the acceptance of tender and prior to execution of the Formal Instrument of Agreement the successful Tenderer shall lodge in safe custody, in the manner prescribed hereunder, complete and full details of the make-up of his Tender, including sub-contract prices, back up information and associated documents such that the derivation of all lump sums and rates making up the Contract Sum are fully defined and justified.

SC35.2 Safe Custody

- (a) The Tender make-up documents shall be enclosed in a sealed container, labelled:

"Submarine Ocean Outfalls Project,
Stage 5 - Bondi,
Underground Works and Outfall Tunnel.

Tender Make-Up for for Contract No. 6519-S

Name of Contractor",

and shall be lodged in safe custody with the Commonwealth Banking Corporation, 304 Pitt Street, Sydney, or with any other body as may be approved by the Principal in writing.

- (b) The document shall be held in safe custody in the joint names of the Contractor and the Principal. Subject to the requirements of paragraph (d) of this sub-clause the Contractor shall be under no obligation to disclose the said Tender Make-Up to the Principal or to any other person or body.
- (c) The Contractor shall notify the Principal, at least one clear working day in advance, of the date of the intended lodgement of the document and the Principal shall arrange for his authorised signatory to be in attendance.
- (d) The terms of the custody in which the documents are lodged shall be such that the Board of Review by majority decision, an arbitrator or any court shall have the authority to order the release of the documents for examination by that Board, arbitrator or court. The sole purpose for which the release of the Tender Make-Up may be ordered shall be the settlement of disputes between the Principal and the Contractor.

- (e) Following the issuing of a release of all claims against the Principal in accordance with sub-clause 42.7 of the General Conditions of Contract, the Principal shall authorise the release of the Tender Make-Up documents from the safe custody.

SC36. CONTRACTOR'S RESPONSIBILITY

If the Contractor's proposals, whether approved by the Superintendent or not, relating to programming, methods of construction, provision of constructional plant and equipment, supply of materials, appointment of sub-contractors, provision of staff and labour, or any other matter affecting the performance of the Contract, should prove to be inadequate for the completion of the Works in accordance with the Contract, the Contractor shall submit alternative proposals for the approval of the Superintendent. The implementation of these proposals shall be at no additional cost to the Principal unless there is an express provision in the Contract for such additional costs.