

1 April 1995

Works Branch Technical Circular No. 6/95

Incorporation of Amendments into Contract Documentation

Introduction

This Circular is a revision of LWBTC No. 23/85, which is hereby cancelled. The major revisions are the addition of paragraph 3(e) and deletion of the requirement that the contracting parties should initial all post tender amendments and correspondence forming part of the contract (paragraph 16). Care must be taken to ensure that any amendments to the documents do actually form part of the Contract and also have the requisite effect on it. This Circular states the principles to be followed in amending standard documents during the preparation of Tender Documents and also provides guidance on the incorporation of amendments between the issue of Tender Documents and the execution of the Contract Documents.

Methods of Amendment

2. Amendments to documents can be made in three ways :
 - (a) redraft the original document correctly, e.g. replace the original erroneous page with a reprinted correct page or add an additional page, as applicable; or
 - (b) alter the text of the document, e.g. corrections to tenderers' errors in the Bills of Quantities; or
 - (c) include an extra document or a letter amplifying or amending the original documents.
3. The following principles shall be applied to both the preparation of the documents and any subsequent amendments :
 - (a) The Conditions of Tender shall only be amended by means of Special Conditions of Tender;
 - (b) The General Conditions of Contract shall only be amended by means of Special Conditions of Contract;
 - (c) The General Specification shall usually be amended by means of a Particular

Specification. In exceptional cases, for example, with alternative designs, amendments may be made by letter;

(d) The Standard Method of Measurement (SMM) shall only be amended by means of appropriate preambles to the Bills of Quantities, by way of replacement or additional clauses, as applicable, in the same format as that given in the SMM. However, in the case of the Hong Kong SMM for Building Works, amendments shall be made by an explanation with the appropriate item; and

(e) Standard documents such as the General Specification and the SMM are updated/amended from time to time. All amendments/corrigenda of standard documents shall be incorporated in full in appropriate places in the tender documents. For example, corrigenda of the General Specification could be included as an Appendix to the Particular Specification with reference to it being made in the clause relating to standard documents.

Amendments Made during the Tender Period

4. Subject to paragraph 3 above, the preferred course of action is paragraph 2(a) above and this should be followed when making an amendment to a tender document. This should be done by means of a replacement/additional page marked "Addendum No." sent to all tenderers who have collected the documents under cover of a letter which will provide for

- (a) an acknowledgment of receipt;
- (b) a certification that the addendum has been taken into account; and
- (c) a Tender Addendum sheet describing the amendments made.

Specimens of the letter and its enclosures are at Appendices 1(a), 1(b), 1(c) and 1(d) inclusive.

5. Where it is not practical to provide a replacement/additional page the amendment may be made by means of an extra document. Such an amendment must also be assigned a Tender Addendum number and be dealt with as in paragraph 4 above.

6. The above amendment documents shall be attached to all the copies of the tender documents held in the office and thereafter tender documents issued to further tenderers shall have attached to them all the amendment documents with the same instructions.

7. Copies of all amendments shall be sent to other parties as required for the particular project.

8. During the tender period the project officer shall maintain a record of all "acknowledgements of receipt" returned and immediately clarify the situation with respect to those not returned within the time limit.

9. The officer submitting the tender report shall check that all amendments have been certified by the tenderers and where such certification has not been submitted with a tender he shall obtain the certification from the tenderer.

Post Tender Correspondence Prior to the Issue of the Letter of Acceptance

10. Where correspondence has been exchanged with the tenderer regarding his tender the officer submitting the tender report shall agree with the tenderer which correspondence shall form part of the contract.

Letter of Acceptance

11. All correspondence exchanged with the tenderer both during the tender period and after receipt of the tender which have been agreed to form part of the contract shall be referred to in the Letter of Acceptance.

Amendments after the issue of the Letter of Acceptance

12. Any amendments required after issue of the Letter of Acceptance can only be made by means of a separate agreement with the tenderer (now Contractor). All such cases must be referred to the Legal Department for advice.

Incorporation of Amendments and Post Tender Correspondence into Formal Contract Documentation

13. Copies of all documentation that is to form part of the contract must, together with copies of the Letter of Acceptance, be bound into the formal contract documents.

14. Those parts of the documents that are amended or affected by correspondence exchanged with the tenderer and that have neither been altered in the document nor replaced by an addendum sheet shall be marked "see correspondence". Where the Conditions of Tender or the Conditions of Contract have been amended by Special Conditions, the affected clauses shall be marked "See Special Conditions".

15. Any correspondence exchanged with the tenderer (who is now the Contractor) that has not been dealt with in accordance with paragraphs 4 or 5 above nor been referred to in the Letter of Acceptance and yet is intended to form part of the contract must be referred to in the Articles of Agreement. This requires amendment to the standard Articles of Agreement which must not be made without reference to the Legal Department.

16. The amendments and correspondence shall be incorporated into the first volume (if there is more than one volume) of the contract documents containing the Articles of Agreement. Where the number of amendments and correspondence is such that it would not be feasible to have them bound into the first volume of the contract documents, copies of all the amendments and correspondence may be placed in a separate volume to the remainder of the documents with an index and a "signature and witness" sheet (as per the specimen given at Appendix 2) at the front of the volume. The "signature and witness" in this volume is to be completed at the time of executing the Articles of Agreement. The various volumes comprising the contract documents should be referenced so that it is quite clear how many volumes are involved and an index should be placed in the first volume making it quite clear that the copies of the correspondence and amendments are in a separate volume.

(J Collier)
Deputy Secretary (Works Policy)

Subsumed

Dear Sirs,

(Contract Title)

..... I enclose Tender Addendum No. in respect of the above contract. I also enclose an additional copy of this letter with a certification added. You are required to sign this certification and attach it together with the addendum to your tender.

..... In addition I enclose an acknowledgement letter which you are required to sign and return within two days of receipt of this letter.

Yours faithfully,

Subsumed

Dear Sirs,

(Contract Title)

..... I enclose Tender Addendum No. in respect of the above contract. I also enclose an additional copy of this letter with a certification added. You are required to sign this certification and attach it together with the addendum to your tender.

..... In addition I enclose an acknowledgement letter which you are required to sign and return within two days of receipt of this letter.

Yours faithfully,

CERTIFICATION

I certify that Tender Addendum No. forwarded with this letter has been taken into account in my tender.

Authorized Signature of Tenderer
(with Company chop)

Name of Tenderer

ACKNOWLEDGEMENT

(to be signed and returned within two days of receipt of the Tender Addendum)

Date

To : (Government or Consultant's Project Officer as appropriate)

Dear Sir,

(Contract Title)

Tender Addendum No.

We hereby acknowledge receipt of Tender Addendum No. for the above contract.

Your faithfully,

.....

(Authorized Signature with Company chop)

Name of Company

(Contract Title)

TENDER ADDENDUM NO.

BILL OF QUANTITIES

Replace Page 2/1 with the enclosed page marked '**ADDENDUM No.** ' :

The item for demolition of groups of buildings and structures in Area C is deleted.

Subsumed

(Contract Title)

SIGNED, SEALED AND DELIVERED

by the Contractor in the presence of -

.....
.....witness

or

The COMMON SEAL of the Contractor
was affixed in the presence of -

.....
.....witness

or

SIGNED, SEALED AND DELIVERED

for and on behalf of and as lawful attorney
of the Contractor under Power of Attorney
dated

by.....

in the presence of -

.....
.....witness

SIGNED, SEALED AND DELIVERED

for and on behalf of the Government

by

(name and appointment of officer)

in the presence of -

.....
.....witness

Dated this Day of 19