

10 April 1989

**Lands and Works Branch Technical Circular No. 6/89**

**Sections Subject to Excision in Civil Engineering Contracts**

**Introduction**

The purpose of this circular is to remove any past confusion in the use of the term Provisional Work in civil engineering contracts with other terms such as Provisional Items and Provisional Sums. Provisional Work shall now be defined as "Section Subject to Excision".

**Background**

2. On occasion it is necessary to let contracts prior to confirmation that all the work can proceed. For example, where there are land clearance problems, or where a decision has yet to be reached on the inclusion of a footbridge in a roadwork contract.
3. In such circumstances it is obviously beneficial to have these works included as part of the competitive tender, but also equally important to make it clear to the tenderers that these works may not be required.

**Implementation**

4. Where work is to be included in a tender, but the implementation of that work has not been decided upon by the Employer, then such work must be incorporated as a Section (as defined in the General Conditions of Contract, 1985 Edition, Clause 1) of the Works.
5. Consequently the Bill items for such works should comprise a separate Bill within the Bills of Quantities which should be clearly designated "Section Subject to Excision", and the standard Special Condition of Contract (attached as an Appendix to this circular) included in the contract.
6. Also the following information must be included in the Appendix to the Form of Tender:
  - (a) the period of time within which the Engineer may instruct the Contractor to proceed with the work contained within the Section Subject to Excision. This period commences from the date for commencement notified by the Engineer in accordance with the General Conditions of Contract, 1985 Edition, Clause 47.
  - (b) the time for completion of the Section Subject to Excision, and

- (c) the liquidated damages for the Section Subject to Excision, which must be included in the sum for liquidated damages for the whole of the Works.

7. Once the contract has commenced and within the period of time described in paragraph 6 (a) the Employer must decide whether he wishes the work contained within the Section Subject to Excision to be carried out or not. If the decision is made to proceed with the work then the Engineer must issue an Instruction to the contractor. If the decision is made not to proceed then the contractor should be notified accordingly.

#### **Notes for Guidance**

8. As the contractor must allow for the Section Subject to Excision in his programme, it must be taken into account when assessing the time for completion stated in the contract.

9. It must also be remembered that if the work contained in the Section Subject to Excision is not ordered, any preliminaries and overhead costs attributable to that Section which may be covered elsewhere in the contract would still be payable to the contractor. Accordingly the effect of including a Section Subject to Excision and the probability of its incorporation in the Works must be carefully considered before it is included in the tender documents. In view of the above, Preliminary Items in respect of the Section Subject to Excision, where these can be identified, should be included in the Bill of Quantities designated Section Subject to Excision.

10. Sections Subject to Excision can only be included in tender documents with the approval of a D2 level officer or above.

**( Graham Barnes )**  
**Secretary for Lands and Works**