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Ingénierie • Economie • Aménagement



**Rehabilitation of Caucasian Highways  
Azerbaijan Georgia and Armenia**

EUROPEAID/113179/C/SV/MULTI

**TRACECA**

This Project is funded by the European Union

Our Reference PS277/SID/1/041

25/04/2003

European Commission  
Europeaid Co-operation  
Office L41 04/6  
B-1049  
Brussels

**Contract Details:**

**Title:** Rehabilitation of Caucasian Highways  
Azerbaijan Georgia and Armenia

**Number:** EUROPEAID/113179/SV/MULTI

**Subject:** Justification of amended design for the Gasan Su Chay Bridge  
Under your Contract Europeaid/112944/CW/AZ

Attention Mr E. Dalamangas

Dear Mr. E. Dalamangas


Please find attached a 20-page report as requested through the Traceca IGC in Baku covering the reasons for amendments to Gasan Su Chay Bridge. As your Project Manager (Engineer as in FIDIC rules) we have prepared the report to justify the necessary amendments. The report includes all the necessary extracts from the various Contracts documents.

The Project Team Leader would appreciate an approval as soon as possible in order not to delay the Contractor.

Thanking you in advance

Yours sincerely

F Signor  
LBSA  
cc M Graille Team Leader Traceca Coordination Team



TACIS Regional 2000 TRACECA programme

Rehabilitation of Caucasian Highways  
Azerbaijan

**Reconstruction of Shamkir and Gasan Su Chay  
Bridges. Europeaid/112944/C/W/AZ**

Request to Employer to approve revised details of Gasan Su Chay  
Bridge



This project is funded by  
the European Union



A project technical Supervision by  
Louis Berger SA Paris France

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## **1 Request Synopsis**

The purpose of this report is to request by the Supervising Project Manager to the overall Project Manager (representing the Employer) for an approval for the necessary amendments to the Gasan Su Chay bridge that form part of the Contract known as EUROPEAID/112944/C/W/AZ. This is a contract signed between the EC as Contracting Authority and the Contractor Azerkorpu. The report will cover the customary procedures for Civil Engineer projects and explain how these have to be amended when there are extra parties involved with the Contract. In this case there are a number of interested parties that are involved. In addition to the Project Manager (as Engineer in FIDIC rules) we have a beneficiary who will receive the finished bridges. Furthermore the Bridges are required as part of an overall project involving a World Bank credit for the rehabilitation of the Ganja to Gasakh highway in Azerbaijan. This section of road way has been awarded to another Contractor and is mainly funded as part of an IDA credit. The Supervision Project Manager for that contract is also the same as for the Bridges. However in that Contract the Employer is the State roads department or Azeravtoyol. The Supervising Project Manager has been appointed by the EC as part of EUROPEAID/113179/C/SV/MULTI. For both contracts.

This report will explain the reasons for the amendment and the cost implications of the changes to the Employer. Various options will be set out with explanations of the consequences to the Parties.

Extracts from the terms of reference and the Supervising contractor's proposals will be appended and also the various drawings as at the time of the Tender and at the present request.

As the Gasan su Chay Bridge forms an integral section of another road rehabilitation project it must be built on the correct alignment both vertical and horizontally. From the report the Engineer recommends that the Employer approve the amendments and the works can continue without further delay.

## General Introduction

The Contract known as Europeaid/112944/C/M/AZ. Covers the construction of two bridges the first Shamkir is at chainage 382+690 and the second at Gasan su Chay is at chainage 447+650. The Shemkir Bridge is on the road contract known as lot 1 and will be built as per the Tender design. However, the Employer must arrange for the construct drawings to be issued. The drawings issued to date have no reinforcement details.

The second bridge is at 447+650 or 54+100 according to the Kocks datum. This is on a further lot 3 that has not been invited for tender as at today's date. Delays to the Shemkir Bridge could result in a claim for additional time in accordance the conditions of contract and that could also affect the roads contractor for lot 1. The Tenders for the remaining four sections of the roads will be invited according to IDA's procurement rules during the next few months.

The law of this contract has been amended by the special conditions to be under the law of Azerbaijan and as such Azerkorpu has completed the bridge calculations in accordance with their standards. It is the supervising Engineer duty under article 4 II (3) (d) to check all working drawings. To this event the Project Director has asked for approval of the short-term specialist.

After the drawings for the Bridge were completed and the Tender invited the design has evidently revised the road alignment and as such the bridge alignment must be amended to match. This amendment would be equally necessary for whatever Contractor was awarded the Contract. Letters confirming these dates are appended. Therefore there are breaches of rules or unfair advantages gained by any party. The Works Contractor has prepared a revised budget for the works with a little extra cost to the approach roads but the structure is slightly lower in price. This is detailed in the financial report herein.

## Standard Civil Engineering Procedures

The original Civil Engineering procedure involved three parties the Client, or Employer the Engineer and the Contractor. When a client requires that a Civil Engineering project be undertaken he would engage an Engineer to design the project and prepare estimates before engaging a contractor to construct the works. When a Works Contractor is appointed the client employs an Engineer to supervise the works. After that point all communications between the Employer and the Contractor is conducted through the Engineer.

Today there are other parties involved such as a Funding Agent and a Beneficiary. This means there are also extra contract agreements and further rules to be observed. Where a funding agent is loaning money to the beneficiary the latter becomes the Employer and is responsible to Contractor to make all payments and to the Funding agent to comply with their rules. In the case in which the funding agency is a donor then the Beneficiary can become either a total Employer as if the project was funded by a loan or by being the "Employer" with respect to only the technical side of the Project. In that case the Beneficiary should still responsible for the coordination of the technical aspects of the Works Contract.

The Contract - Europeaid/112944/C/W/AZ.- is to construct a bridge that forms an integral part of another larger road rehabilitation project. As such the bridge must be situated on the road alignment.

For the contract - Europeaid/112944/C/W/AZ. - the Tender was called under the rules of the EC and has been awarded and signed also by the EC. The latter now has two roles as Employer and as funding agent. In the event that as funding agent they were to withdraw the Tender they would still be liable as Contracting Authority to terminate the contract in accordance with article 61.1 and then to settle the resulting claim from the Contractor in accordance with article 61.9.

## Contract Details

### Reconstruction of Shamkir and Gasan Su Chay Bridges

<b>Contract Details</b>	<b>Europeaid/112944/CW/AZ.</b>
Employer Project Manager	European Community E Dalamangas
Funding Agent Project Manager	European Union E Dalamangas
Beneficiary Vice President	Azeravtoyol N Garaisayev
Works Contractor	Azerkorpu
<b>Supervisor Louis Berger SA</b>	<b>Europeaid/113179/C/SV/MULTI.</b>
Funding Agent Project Manager	European Union E Dalamangas
Project Manager (Engineer)	G C Tremlett C Eng. MICE
Project Managers Representative	S I Dotchev Pr. Eng.

## Associated Contracts

### Rehabilitation of Ganja to Shamkir Road Section

Contract Details	Lot 1
Employer Project Manager	Azeravtoyol N Garaisayev
Funding Agent Project Manager	IDA World Bank Government of Azerbaijan
Beneficiary Vice President	Azeravtoyol N Garaisayev
Works Contractor	Turan Hazinedaroglu and Oztash Inshaat Joint Venture
<b>Supervisor Louis Berger SA</b>	<b>Europeaid/113179/C/SV/MULTI.</b>
Funding Agent Project Manager	European Union E Dalamangas
Project Manager (Engineer)	G C Tremlett C Eng. MICE
Project Managers Representative	S I Dotchev Pr. Eng.

### Reconstruction of Road Section Km 430.8 to 451.8 (Tovuz)

Contract Details	Lot 3
Employer Project Manager	Azeravtoyol N Garaisayev
Funding Agent Project Manager	IDA World Bank Government of Azerbaijan
Beneficiary Vice President	Azeravtoyol N Garaisayev
Works Contractor	Unknown
<b>Supervisor Louis Berger SA</b>	<b>Europeaid/113179/C/SV/MULTI.</b>
Funding Agent Project Manager	European Union E Dalamangas
Project Manager (Engineer)	G C Tremlett C Eng. MICE
Project Managers Representative	S I Dotchev Pr. Eng.

Rehabilitation of Caucasian Highways Azerbaijan Georgia and Armenia  
EUROPEAID/113179/C/SV/MULTI

This Project is funded by the European Union



## **Proposed Amendments and Technical Justification**

### **Amendments**

The Bridge needs to be raised such that it is in the same alignment as the revised road layout. The bridge was designed in accordance with information known as at 27<sup>th</sup> July 2001. After which the road alignment was refined and submitted for approval to the IDA and Azeravtoyol on 13<sup>th</sup> December 2002. Following the receipt of these drawings Azeravtoyol inadvertently informed Azerkorpu who in accordance with Azeri law prepared the "working drawings" to incorporate the revised road levels. In the appendix is a copy of the letters from Kocks Consult GMBH.

There may well be a misunderstanding of Contract Protocol but LBSA were not informed of the changes nor were they even informed that the Works Contract had been signed. These revised drawings have been presented to the Engineer and they will be checked in accordance with Terms of Reference. The relevant section is in the appendix. The Engineer has proposed a short-term bridge specialist and is currently awaiting EC approval.

### **Technical Justification**

In the original layout the approach gradients to and from the bridge were over 5% and over 6% respectively but in accordance with the standards for this class (class 1) of highway the maximum is less than 4.5%.

The amendments to the superstructure will only involve a slight extra flexural moment on the columns and a minor redistribution of stress on the ground. The subsoil conditions remain unaltered and the main decks remain the as before. Each span will still carry the same loading as before and hence no changes are envisaged. The Works contractor has been mindful of the need to keep within the budget cost and has produced a slightly more economical structural design. However as laid down in the Terms of reference and the Contractor's (Engineer) proposal they will have an International Expert to check all calculations and she is due to arrive by 1<sup>st</sup> May.

Thus there are a number of options that can be considered

#### **Option 1**

The Employer can refuse the amendments. If this option is chosen there would be a bridge substantially below the proposed designed road level and thus non-conforming design changes would have to be made to the road design. Not acceptable to anybody.

#### **Option 2**

The funding agent could decide that the proposed amendments are a substantial change from the Tender thus rendering the Tender invalid. However this Contract is now in force and would result in the Employer having to evoke article 61.1 and to terminate the contract. The Contractor, who has no fault of his own as he is not he designer, would then submit a major claim, in accordance with Article 61.9, that the Employer will have to honour. Furthermore, the other contract would become impossible and there could be repercussions concerning the I.F.I. for the remaining projects. It should also be noted that Rehabilitation of Caucasian Highways Azerbaijan Georgia and Armenia  
EUROPEAID/113179/C/SV/MULTI

in this case the Funding Agent and the Employer are one and the same body. As article 61.9 is vague it may not be apparent that this claim could be very high. The guidelines for settling a claim would follow Clause 65.8 of FIDIC. This is the reasonable interpretation as throughout the contract, bidding documents and glossary of terms reference is made to FIDIC definitions. Again this is not an option to be recommended.

### **Option 3**

The funding agent accepts that any successful tenderer would have been faced with the same problem and the solution would have been resolved in the same manner in accordance with Conditions of Contract. There is no extra costs sought by then Contractor and the Beneficiary has requested that the Engineer instruct the changes. The Engineer has advised the Beneficiary to write to the Project Manager (as Employer) and make the request.

Thus there is no conflict with the rules of the funding agent and thus the Employer agrees with the proposed amendment, the Engineer certifies that the design is to EC standards or higher and the contract proceeds.

### **Recommendations**

This option is strongly recommended by the Supervising Engineer and the Beneficiary.

## Financial Justification

The following table has been calculated to cover the revised costs of the amended bridge and the adjoining approach roads. It is presented in the format to be used to cover any change to the Works or Variation Order found to be necessary in the normal course of a construction Contract. The changes in cost reflect the higher embankment but are offset by the more economical structural design of the bridge.

**Table 2 Showing Relation Between the Tendered Contract Price and the Revised Contract Price**

<b>Bill No.</b>	<b>Description</b>	<b>Contract Price EURO</b>	<b>Revised Contract Price</b>	<b>Net Change</b>
100	General Items	62,600.00	62,600.00	0.00
200	Shemkir Cay Bridge	744,020.50	744,020.50	0.00
300	Gasas Su Cay Bridge	260,169.00	254,876.00	-5,293.00
400	Approach Road to Shemkir Cay Bridge	126,448.00	126,448.00	0.00
500	Approach Road to Gasas Su Cay Bridge	146,580.00	156,239.00	9,659.00
600	Miscellaneous	6,000.00	6,000.00	0.00
700	Dayworks	10,390.00	10,390.00	0.00
	Available Contingencies	67,810.00	63,444.00	-4,366.00
	<b>TOTAL Contract Price</b>	<b>1,424,017.50</b>	<b>1,424,017.50</b>	<b>0.00</b>

### Recommendation

As can be seen from above there is no change to the Contract Price and there is still €63,444.00 available for contingencies. Therefore as such both the Engineer and the Beneficiary recommend the amended layout of the structure.

Signed



G C Tremlett C Eng MICE  
Louis Berger SA  
Project Team Leader

# APPENDIX

Drawings and approval letters for bridge data and road data  
Extracts from the Terms of reference  
Extracts from the bidding data and Conditions of Contract  
List of revised drawings for Gasan su Chay showing reinforcement details.





Feasibility Study for Rehabilitation and the Reconstruction of the Road Link Between Baku, Tbilisi and Yerevan

Mr Nizami Garaisayev  
Vice President  
State Concern Azeravtoyol  
72/4 U. Hajibeyov Street  
370010 Baku, Republic of Azerbaijan

Господин Низами Гараисаев  
Вице Президент  
Государственный Концерн "Азеравтойол"  
ул.У.Гаджибекова 72/4  
370010 Баку, Республика Азербайджан

27.07.2001

Dear Mr. Garaisayev,

Уважаемый господин Гараисаев

**Subject: TACIS SERVICE CONTRACT**  
**Contract: 00-0171.00**  
**Project No.: SCR-E/110579/C/SV/WW**  
**Feasibility Study for Rehabilitation and the Reconstruction of the Road Link between Baku, Tbilisi and Yerevan**

**Тема: КОНТРАКТ ТАЦИС ОБ УСЛУГАХ**  
**Контракт: 00-0171.00**  
**№ проекта: SRC-E/110579/C/SV/WW**  
**ТЭО реабилитации и реконструкции дороги, связывающей Баку, Тбилиси и Ереван**

Reference: Shemkir and Gasan Su Cay Bridges

Ссылка: Мосты Шамкир и Гасансу-чай

Referring our discussions about the Tacis financed construction of the Shemkir and Gasan Su Cay bridges, please find attached the draft engineering report and design drawings for your comment and review. The report is submitted in three copies in English and three copies in Russian.

Согласно нашим обсуждениям относительно строительства мостов Шамкир и Гасансу-чай, финансируемых Тасис, предлагаем вам предварительный инженерный отчет и чертежи для рассмотрения и замечаний. Отчет представляется в трех экземплярах на английском и русском языках.

Yours sincerely

С уважением

KOCKS CONSULT GMBH  
Consulting Engineers

КОКС КОНСАЛЬТ  
Консультирующие Инженеры

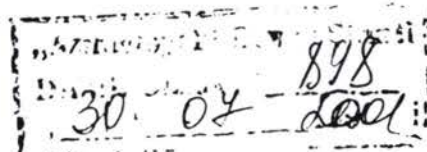
Carsten Griese

Карстен Гризе

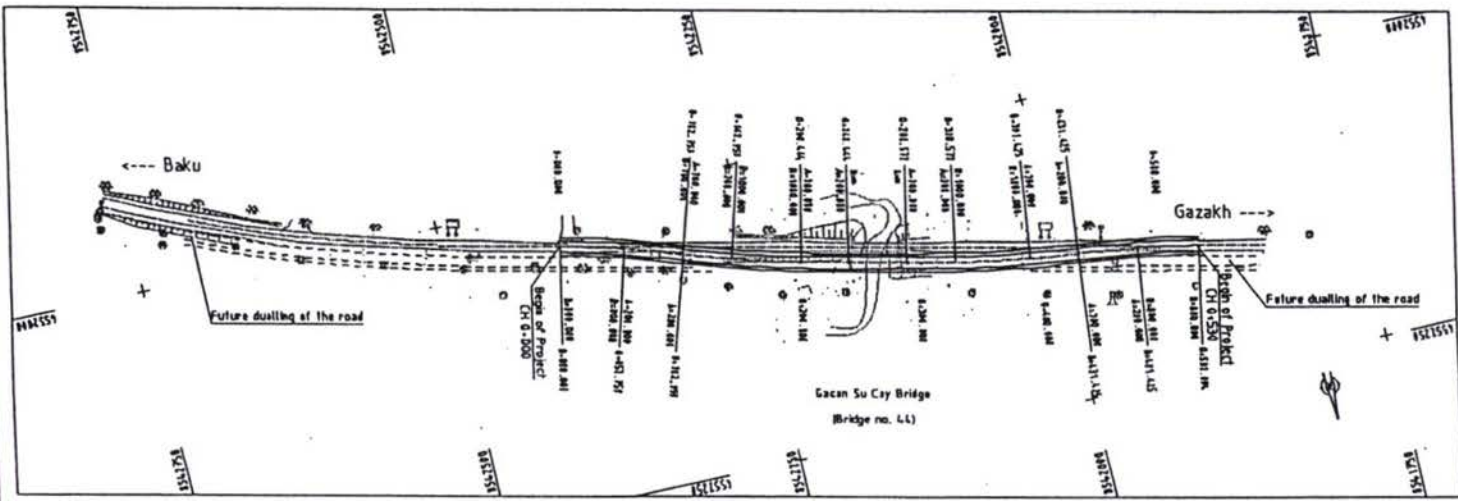
Encl. Draft Engineering Report and Design Drawings

Прилож.: Предварительный Инженерный Отчет и Чертежи

KOCKS CONSULT GMBH BCEOM FINNROAD Ltd.  
c/o Azeravtoyol, Scientific Research Centre  
84/19 Moscow Street  
370033 Baku, Azerbaijan  
Tel.: (+994 12) 66 99 34  
Tel./Fax: (+994 12) 98 06 75  
Mobile Phone: (+994 50) 216 27 03  
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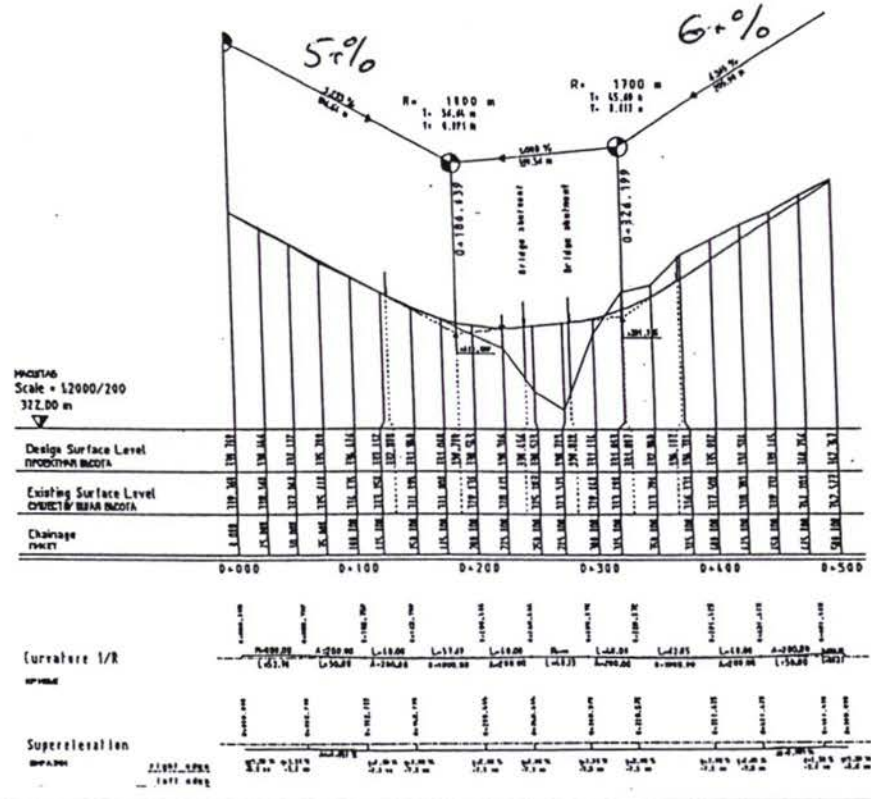
BRIDGE CONTRACT DRAWING



GENERAL DATA - DIMENSIONS (MM)

Centerline m. W - Approach and Lane to Lay Bridge

No. Sheet	Type	Span	Structure	Bridge	Support	PIVI	Centerline
		Length	Width	Height	Height	Height	Intersection
		(m)	(m)	(m)	(m)	(m)	Point
							Number
1	I	60.00	11.70	3.30	10.10	10.10	15201.71
1	I	20.00	6.41	3.00	10.10	10.10	15202.00
1	I	20.00	6.41	3.00	10.10	10.10	15202.30
1	I	60.00	11.70	3.30	10.10	10.10	15202.60
1	I	20.00	6.41	3.00	10.10	10.10	15202.90
1	I	20.00	6.41	3.00	10.10	10.10	15203.20
1	I	60.00	11.70	3.30	10.10	10.10	15203.50
1	I	20.00	6.41	3.00	10.10	10.10	15203.80
1	I	20.00	6.41	3.00	10.10	10.10	15204.10
1	I	60.00	11.70	3.30	10.10	10.10	15204.40
1	I	20.00	6.41	3.00	10.10	10.10	15204.70
1	I	20.00	6.41	3.00	10.10	10.10	15205.00
1	I	60.00	11.70	3.30	10.10	10.10	15205.30
1	I	20.00	6.41	3.00	10.10	10.10	15205.60
1	I	20.00	6.41	3.00	10.10	10.10	15205.90



REPUBLIC OF AZERBAIJAN		РЕСПУБЛИКА АЗЕРБАЙДЖАН	
AZERAVTOYOL SC		ГК АЗЕРАВТОЙОЛ	
KOCKS CONSULT GMBH		KOCKS	
Construction of Gasan Su Cay and Shenkir Cay Bridges			
СТРОИТЕЛЬСТВО МОСТОВ ГАСАН СУ ЧАЯ И ШЕНКИР ЧАЯ			
Gasan Su Cay Bridge		МОСТ ГАСАН СУ ЧАЯ	
Plan and Profile		ПЛАН И ПРОФИЛ	
Date: July 2001		Date: July 2001	
Drawing No. C-2		Drawing No. C-2	

Kocks Consult GmbH • P. O. Box 20 09 63 • D-56009 Koblenz

**Head Office Koblenz**  
Stegemannstraße 32 - 38  
56068 Koblenz

Mr Nizami Garaisayev  
Vice President  
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370010 Baku, Republic of Azerbaijan

Phone: xx (49 261) 13 02-0  
Telefax: xx (49 261) 13 02-15 2  
Cable: KOCON  
E-Mail: kocks@t-online.de

Ref.:

Koblenz,

13.12.2002

Dear Mr. Garaisayev,

Уважаемый господин Гараисаев

**Revised Bidding Documents for the  
Rehabilitation of the Shemkir - Gazakh Road  
Sections**

**Переработанные Документы Конкурсных  
Торгов для реабилитации Участка Дороги от  
Шемкира до Газаха**

In response to the received comments on the bidding documents for the rehabilitation of the Shemkir to Gazakh road section, we have the pleasure to submit to you the revised bidding documents (Contract CW-2003-1 to CW-2003-4), taking into account the comments as appropriate.

Ссылаясь на полученных замечаниях документов конкурсных торгов для реабилитации Участка Дороги от Шемкира до Газаха, учитывая замечаний мы представляем вам переработанные документы конкурсных торгов (от Контракта CW-2003-1 до Контракта CW-2003-4).

We trust that we have followed your instructions correctly.

Мы надеемся, что мы следовали вашим показаниям соответственно.

Yours sincerely

С уважением

KOCKS CONSULT GMBH  
Consulting Engineers

КОКС КОНСАЛЬТ  
Консультирующие Инженеры



Carsten Griese

Карстен Гризе

Encl.:

- Bidding documents for Contract CW-2003-1, CW-2002-2, CW-2002-3 and CW-2003-2
  - Cost estimates
  - Engineering report
- in the English and Russian language

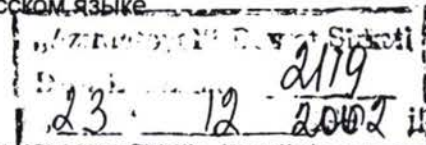
Прил.

- Документы Конкурсных Торгов для Контракта CW-2003-1, CW-2003-2, CW-2003-3 и CW-2003-4
  - Сметная Стоимость
  - Инженерный Отчет
- На английском и русском языке

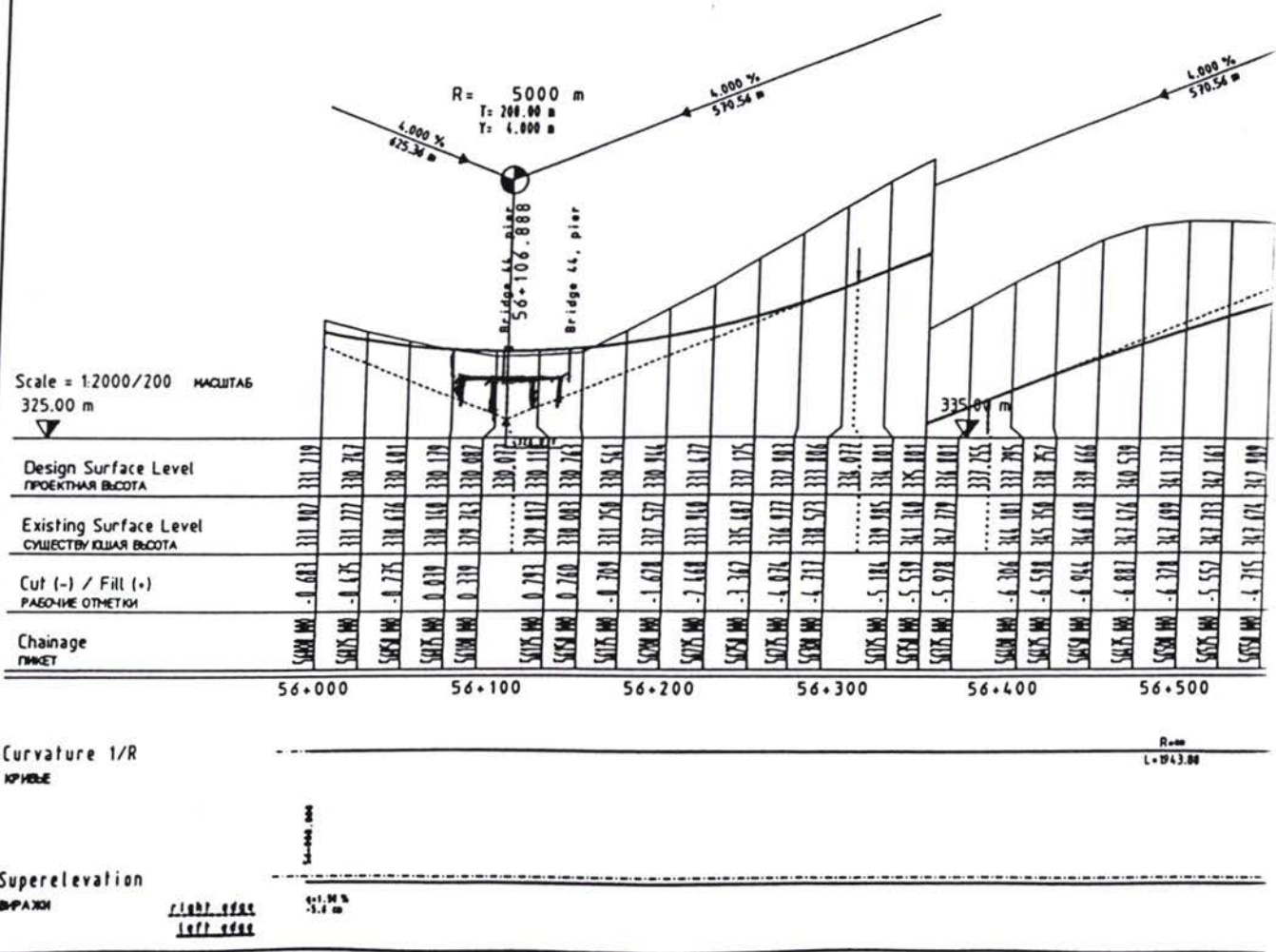
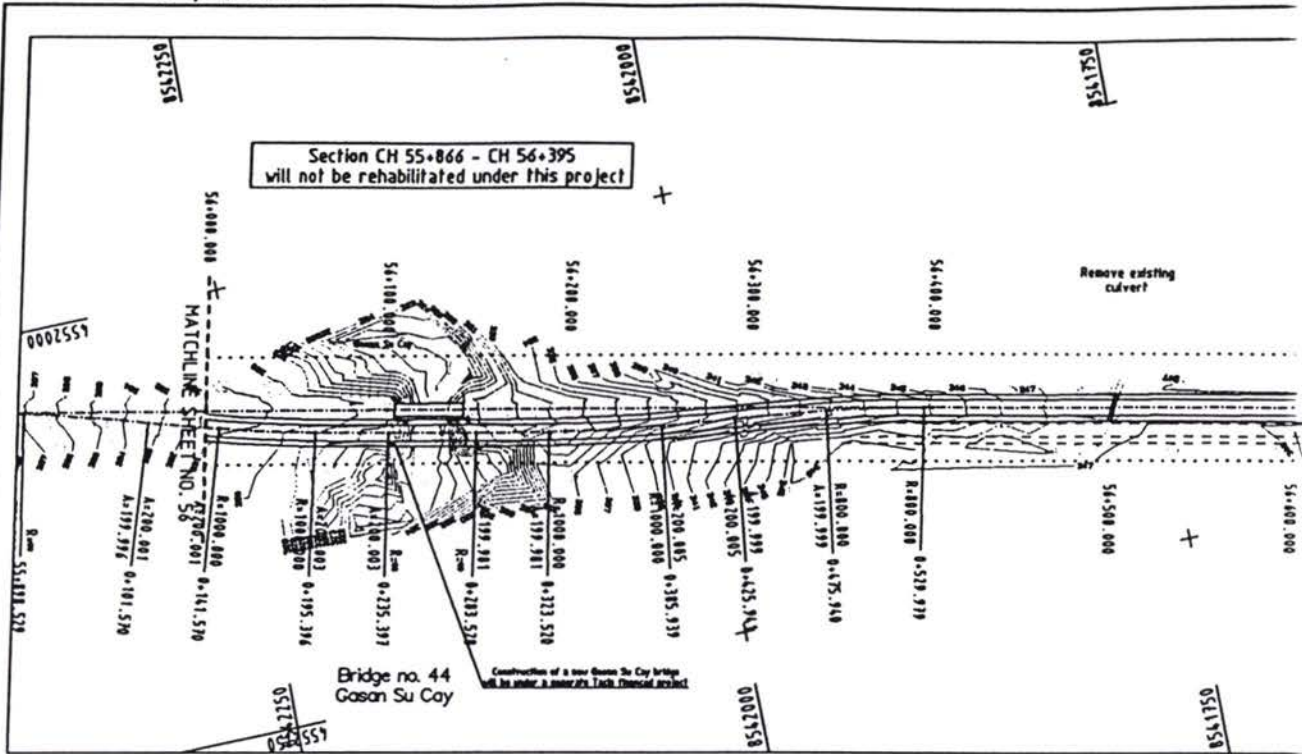
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Deutsche Verkehrs-Bank, Mainz  
Acc.: 0 910 638 535, Swift: DVKB DE FF

Hypothesen- und Wechsel-Bank AG,  
Koblenz  
Acc.: 4 120 146 640, Swift: DE MM  
Registered at Koblenz HR B 13 10

Board of Directors: Dipl.-Kfm. Jürgen Kocks  
Dipl.-Ing. Ulrich Sprick  
Dipl.-Ing. Michael Leinhos

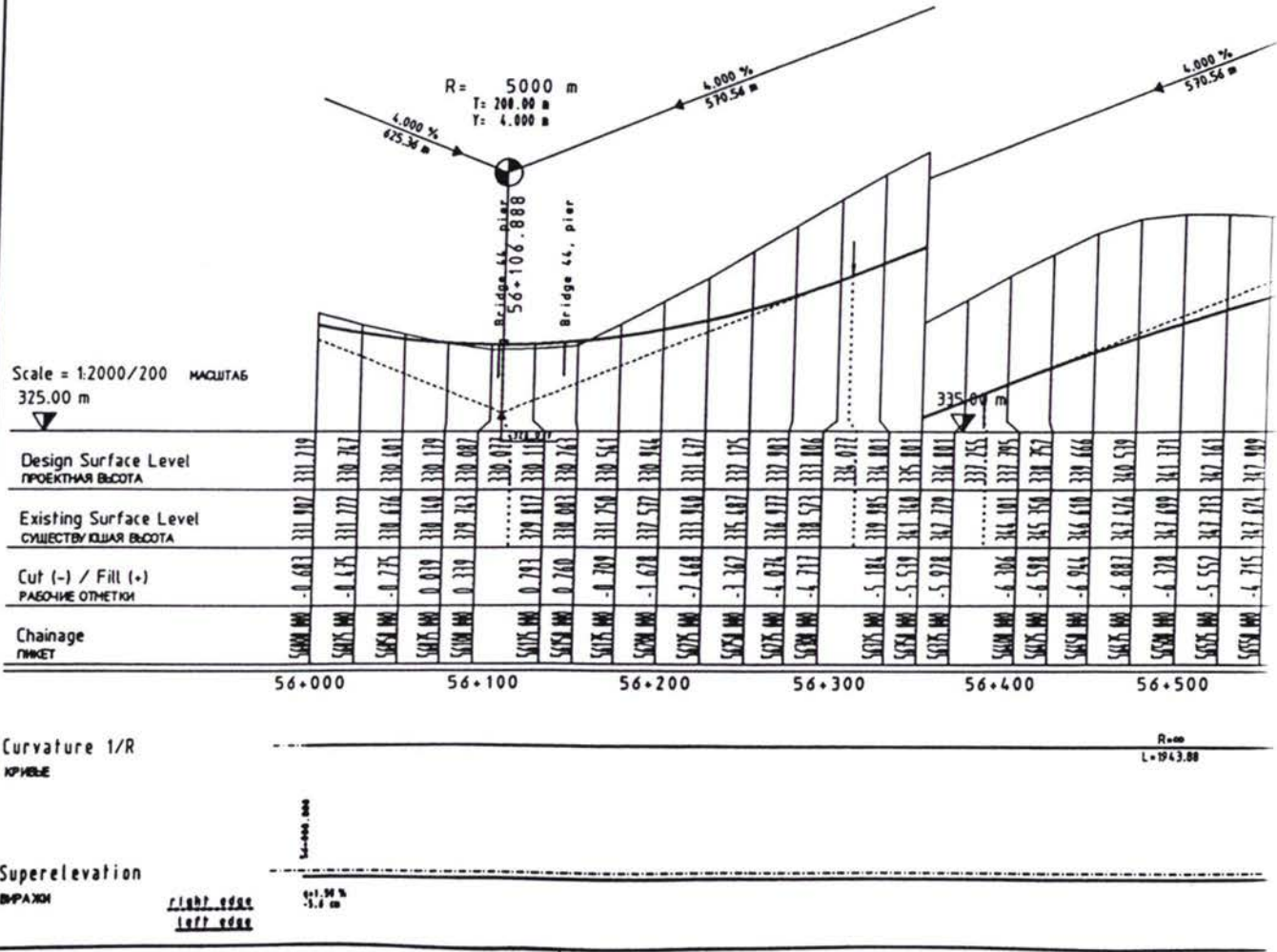
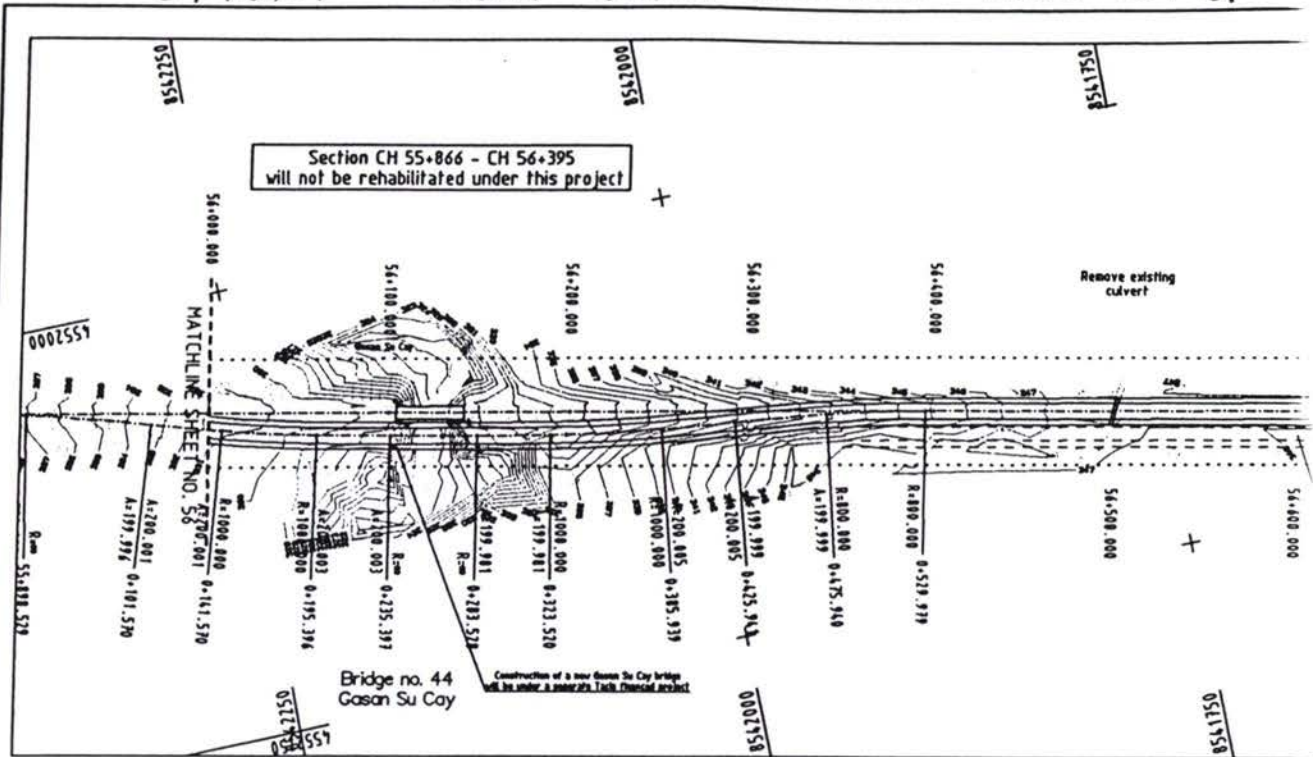


EXTRACT FROM





EXTRACT FROM DESIGN DRAWINGS ROAD LOT 3.



2.

## PRELIMINARY PROVISIONS

### ARTICLE 1

#### Definitions

- 1.1 The headings and titles in these General Conditions shall not be taken as part thereof or be, taken into consideration in the interpretation of the Contract. .
- 1.2 Where the, context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 1.3 Words importing persons or parties shall include firms and companies and any organisation having legal capacity.

### ARTICLE 2

#### Law and Language of the Contract

- 2.1 The law of the Contract shall be the law of the State of the Contracting Authority unless otherwise stated in the Special Conditions.
- 2.2 The tender and the contract documents, all correspondence relating to them, the instructions for use and the maintenance instructions shall be drawn up in the language indicated in the Special Conditions.
- 2.3 For all matters not covered by the above provisions, the law applicable shall be stated in the Special Conditions.

### ARTICLE 3

#### Order of precedence of Contract Documents

- 3.1 The contract is made up of the following documents, in order of precedence:
  - (a) The Contract Agreement,
  - (b) The Special Conditions of Contract ( Part II ),
  - (c) The General Conditions of Contract ( Part I ),
  - (d) The Technical Specifications,
  - (e) The Design Documentation (Drawings),
  - (f) The Priced Bill of Quantities (after arithmetical corrections)/Price Schedule,
  - (g) The said Tender with Appendixes,
  - (h) Any other Documents forming part of the Contract:
  - (h) (1).

Addenda and memoranda have the order of precedence of the document they are modifying.

- 3.2. The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

1

**Final Acceptance Certificate:** Certificate(s) issued by the Project manager to the Contractor at the end of the Defect Liability Period stating that the Contractor has completed his obligations to construct, complete, and maintain the Works concerned.

**Provisional Sum:** A sum included in the contract and so designated for the execution of work or the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the Project Manager

**Dayworks:** Varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

**Variation:** An instruction given by the Project manager, which varies the Works.

## ARTICLE 2

### Law and Language of the Contract

- 2.1 The law of the Contract shall be the law of the State of Azerbaijan unless otherwise stated in the Special Conditions.
- 2.2. The tender and the contract documents, all correspondence relating to them, the instructions for use and the maintenance instructions shall be drawn up in the English language.
- 2.3 The language for communication shall be the English language; and in correspondence with the Contracting Authority and other Government institutions in addition to the English language the Azeri and/or the Russian language

## OBLIGATIONS OF THE CONTRACTING AUTHORITY

### ARTICLE 8

#### Supply of Documents

- 8.4 The procedure used by the Contracting Authority and the Project Manager to approve drawings and other documents produced by the Contractor, is as follows:
  - a) For all temporary works, camp and work site, traffic safety and diversion, lifting and placing of temporary and permanent bridge members, reinforcement and shattering, scaffolding and lifting drawings, the Contractor shall produce drawings and other documents in consideration of the nature of the works under the contract, and in consideration of the applicable standards and norms, and of the traffic safety and local legislation.
  - b) ~~The Project Manager will check the Contractors Drawings~~ and will notify the Contractor in case of any deficiency. The Contractor will correct the deficiency and resubmit to the Project Manager, who will check and forward the checked documents for comment and approval to the Contracting Authority. The time for approval after any initial defect has been rectified is 30 days.
  - c) The Contractor shall further check all of the Contracting Authorities and the Project Manager's drawings and other documents, to ensure that the works will be correct and complete under the contract. The Contractor shall bring to the Project Manager's attention any deficiencies in the documents before commencing any

- 60.6 Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

## ARTICLE 61

### Termination by the Contracting Authority

- 61.1 The Contracting Authority may, at any time and with immediate effect, terminate the Contract, except as provided for under Article 61.2.
- 61.2 Except as otherwise provided in these General Conditions, the Contracting Authority may, after giving 7 days notice to the Contractor, terminate the Contract, and expel the Contractor from the Site in any of the cases where:
- a) the Contractor fails to carry out the Works substantially in accordance with the provisions of the Contract;
  - b) the Contractor fails to comply within a reasonable time with a notice given by the Project manager requiring him to make good any neglect or failure to perform his obligations under the Contract which seriously affects the proper and timely performance of the Works;
  - c) the Contractor refuses or neglects to carry out administrative orders given by the Project manager;
  - d) the Contractor assigns the Contract or sub-contracts without the Authorisation of the Contracting Authority;
  - e) the Contractor becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or goes into liquidation;
  - f) any adverse final judgement is made in respect of an offence relating to the professional conduct of the Contractor;
  - g) any other legal disability hindering performance of the Contract occurs;
  - h) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the Contract;
  - i) the Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance required under the present contract is not able to abide by his commitments;
- 61.3 Termination shall be without prejudice to any other rights or powers under the Contract of the Contracting Authority and the Contractor. The Contracting Authority may, thereafter, complete the Works himself or conclude any other Contract with a third party for the account of the Contractor. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority expels him from the Site without prejudice to any liability thereunder that may have already occurred.

- 61.4 The Project manager shall, upon the issue of the notice of termination of the Contract, instruct the Contractor to take immediate steps to bring the Works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
- 61.5 The Project manager shall, as soon as is possible after termination, certify the value of the Works and all sums due to the Contractor as at the date of termination.
- 61.6 In the event of termination:
- a) the report of work performed by the Contractor shall be drawn up by the Project manager as soon as possible after inspection of the Works, and inventory taken of temporary structures, materials, Plant and Equipment. The Contractor shall be summoned to be present during the inspection and the taking of the inventory. The Project manager shall also draw up statements of emoluments still owed by the Contractor to workers employed by him in relation to the Contract and of sums owed by the Contractor to the Contracting Authority;
  - b) the Contracting Authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the Project manager, Plant and materials specifically supplied or manufactured in connection with the execution of work under the Contract;
  - c) the purchase price of the temporary structures, Equipment, Plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the Contractor, such expenditure being limited to that required for the performance of the Contract under normal conditions;
  - d) the Contracting Authority may purchase, at market prices, the materials and items supplied or ordered by the Contractor and not already paid for by the Contracting Authority on such conditions, as the Project manager considers appropriate.
- 61.7 The Contracting Authority shall not be obliged to make any further payments to the Contractor until the Works are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works, or pay any balance due to the Contractor prior to the termination of the Contract.
- 61.8 If the Contracting Authority terminates the Contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the Contract. If no maximum amount is stated, the Contracting Authority shall not be entitled to recover more than the part of the Contract Price corresponding to the value of that part of the Works which cannot, by reason of the Contractor's failure, be put to the intended use.
- 61.9 Where the termination is not due to an act or omission of the Contractor, the latter shall be entitled to claim in addition to sums owing to him for work already performed, an indemnity for loss suffered.

## ARTICLE 53

### Payments in Foreign/National Currency

- 53.1 Where under the Contract the Contractor is entitled to payments in Foreign/National Currency, the rates of exchange for calculating the payments shall be those published in the Official Journal of the European Communities, Supplement S, 30 days prior to the latest date fixed for the submission of tenders for the Contract. Such rates of exchange shall not be varied. **–not applicable–**

## SETTLEMENT OF DISPUTES

### ARTICLE 65

#### Settlement of disputes

- 65.1 The Contracting Authority and the Contractor shall make every effort to amicably settle disputes relating to the Contract which may arise between them, or between the Project manager and the Contractor.
- 65.2 The procedure for the amicable settlement of disputes
- a) Amicable settlement by adjudicator  

If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator
  - b) The dispute shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision. The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
  - c) The Adjudicator shall be paid by the hour at the rate specified in the Appendix to Tender, together with reasonable reimbursable expenses, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.  

The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Appendix to Tender.
- 65.3 The parties may agree to the settlement of the dispute by conciliation within a specific Time Limit by a third party after the amicable settlement procedure adopted has failed. This procedure is proposed in accordance with Clause 67 of the FIDIC Conditions of Contract, Dispute Resolution by the Project Manager (Engineer under FIDIC)
- 65.4 The amicable settlement or conciliation procedure adopted shall in all cases involve a procedure in which complaints and responses are notified to the other party.

## Definitions

**Commission:** The Commission of the European Communities

**Contracting Authority (Employer as per FIDIC rules):** The Commission, or the State, or the legal person governed by public or private law which concludes the contract as set out in the Financing Agreement.

**Works contract:** A contract concluded between a Contractor and the Contracting Authority for the execution of works or the building of a structure.

**Mixed contract:** A contract concluded between a Contractor and the Contracting Authority which at the same time comprises at least two different types of input, i.e., works, supply or services.

**Tenderer:** Any natural or legal person or group of such persons submitting a tender, with a view to concluding a contract.

**Successful Tenderer:** The Tenderer selected after a procurement procedure.

**Restricted procedures:** The procedure in which following a procurement notice, only the candidates invited by the Contracting Authority may present an offer.

**Simplified procedure:** The procedure in which without a procurement notice only the candidates invited by the Contracting Authority may present an offer (see Manual point 3.3)

**Negotiated procedure:** The procedure in which without a procurement notice the Contracting Authority consults with the candidate or candidates of his own choice and negotiates the contract conditions with one or several of them (see Manual points 10.1.2, 14.1.2 and 19.1.3).

**Suitable media:** The publication in the Official Journal of the European Communities and on Internet is obligatory in all the cases specified in the Manual. Publication in the journals in the beneficiary country and where necessary other specialised journals may be necessary or recommended as the case may be.

**Tender dossier:** The document drafted by the Contracting Authority and which contains all necessary documents for the preparation and the presentation of an offer.

**General Conditions:** The general provisions, which contain the contractual clauses of an administrative, financial, legal and technical nature with regard to the execution of the contract.

**Special Conditions (Conditions of Particular Applications as per FIDIC rules):** The special provisions drafted by the Contracting Authority which form an integral part of the tender dossier and which contains any modifications to the General Conditions, the specific contractual clauses and the Terms of Reference (in a service contract) or the technical specifications (in a supply or works contract).

**Evaluation committee:** A committee which is composed of an odd number of members, minimum three members, each of whom must have the necessary technical and administrative expertise to assess tenders.

**Time limits:** Time limits shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period.

**Breakdown of the overall price:** The itemised list of rates and prices showing the build-up of the price in a lump sum contract. –not applicable–

**Project manager (Engineer as per FIDIC rules):** the government department, legal person governed by public law, or the natural or legal person designated by the Contracting Authority in accordance with the law of the State of the Contracting Authority, who is responsible for directing/or monitoring the execution of the works contract, or to whom the Contracting Authority may delegate rights and/or powers, under the contract.

**Communications:** certificates, notices, orders and instructions issued in writing under the contract.

**Administrative order:** any instruction or order issued by the Project manager to the Contractor in writing regarding the execution of the works.

**Conflict of interest:** any event influencing the capacity of a candidate, Tenderer or Contractor to give an objective and impartial professional opinion, or preventing him, at any moment, from giving priority to the interests of the Contracting Authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, Tenderer or Contractor, or any conflict with his own interests. These restrictions also apply to Subcontractors and employees of the candidate, Tenderer or Contractor.

**Bill of quantities:** the document containing an itemised breakdown of the tasks to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price.

**Day:** calendar day.

**In writing:** this includes any hand-written, type written or printed communication, including telex, cable and fax transmissions.

**Foreign currency:** any currency permissible under the applicable provisions and regulations other than the EURO, which has been indicated in the tender. –not applicable–

**National currency:** the currency of the country of the Contracting Authority. –not applicable–

**Tender price:** the sum stated by the Tenderer in his tender for carrying out the contract.

**Contract price:** the sum stated in the contract representing the initial estimate payable for carrying out the works, or such other sum as ascertained at the end of the contract as due under the contract.

**International open procedure:** procedure in which any natural or legal person or group thereof may, after publication by the Commission on the OJCE and on its internet site of a call for tender, submit a tender in response to a procurement notice.

**Local open procedure:** procedure in which any natural or legal person or group thereof may, after publication of a call for tender locally, submit a tender in response to a procurement notice

**Candidate:** any natural or legal person or group of such persons applying to take part in a restricted or simplified procedure or selected under a simplified or negotiated procedure.



# Construction of bridges Hasan su and Shamkir chai

## Bridge over Hasansu

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## Extract from Terms of Reference

### II Supervision of Construction of World Bank financed road section

(1). The Consultant will appoint an individual to act as the "Project Manager" as defined in the construction contract documents. The Project Manager will delegate some of his authority to the Resident Project Managers) (RPM), who will act as "the Project Manager's Representative" also as defined in the construction contract documents for *Smaller Works Contracts*. In the *SBDW for Works Contracts* (in excess Of 10 million USD contract value), the project manager is titled "*the Engineer*" and the "*Resident Project Managers) (RPM)*" is titled "*the Engineer's Representative* " as provided for in the "FIDIC Conditions of Contract".

(2). Supervision teams will be composed of qualified and experienced experts, who can carry out all the routine construction supervision duties as a fully competent and independent unit. As a minimum, monthly visits are expected by the Project Manager to all job sites and quarterly coordination meetings will be organised, both on the] ob sites and at AZERAVTOYOL, which will be attended by a representative of the AZERAVTOYOL having authority to make binding decisions on behalf of the Employer.

#### **Duties and Responsibilities of the Project Manager**

The duties of the Project Manager ..... The principal responsibilities of the Project Manager will be the following:

#### **Duties and Responsibilities of the Project Manager**

The duties of the Project Manager are to supervise the works and to approve the materials and workmanship of the works in co-operation and consultation with the Employer, as described in the spelled out in the contract documents for the works. The principal responsibilities of the Project Manager will be the following:

to issue the Order to Commence to the Contractor

to approve and monitor the contractor's work program and the source of materials.

to explain and/or adjust ambiguities and/or discrepancies in the Contract Documents.

to inspect for **approval all working drawings** and as-built drawings prepared by the contractor.

to inspect and test materials and works to ensure compliance with specifications, and/or removal and substitution of improper materials and/or work as required.

to control and appraise the progress of the works, to order suspension of works and to authorise, with the Employer's approval, extensions of the period for completion of the works.



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