



# Why is “Clarification” needed in the Procurement Stage?

	<p>We do not need clarifications. We know how to deal with discrepancies in a secrete manner.</p>	<p>We request <b>comprehensive</b> clarifications about discrepancies, defaults, ambiguous descriptions</p>	
<p>This Party looks for bread / expected preys / gambles.</p>		<p>This Party has intelligently secured the bread without risks.</p>	

Employers, Consultant, Main-Contractors and Subcontractor dealing with good faith, should sit up and take a note:

<p><b>Employer’s Personnel:</b> Soil + Traffic data, <b>Design</b> + Execution Drawings, Specs (RB2017)</p>	<p>Employer’s Personnel: <b>Consultants / Engineer:</b> Design review + <b>prep Drawings</b> and supervise.</p>	<p><b>Main Contractors;</b> Build (Red Book, MDB2010) Clarify Bill No 100 (<b>preliminary and general provisions</b>)</p>	<p><b>Nominated Sub-CONs</b> Split up your Bid in <b>fixed and variable costs.</b></p>
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## Objective Transparency

- A \_ The Engineer has the **Works Contract available** and know exactly the obligations, rights, duties and responsibilities of the **Contractor** and the **Scope** of WORKS (nature and extent).
- B \_ However, the Contractor does not know the **obligations, rights, duties and responsibilities of the Engineer** and the **Scope of SERVICES** (nature and extent)
- C \_ To establish Transparency, all Parties shall be informed over **the interfaces of the obligations** of each Party:
- D \_ **Employer’s Designer / Engineer’s obligations** like Soil Explorations, Structural Analysis, Design duties for “instructed” Variations, Specification changes, instructed nominated Sub-Contractors (sometimes directed for selfish and greedy interests SC04.4, SC05.1, C113),
- E \_ Defined **Site Mobilization for Engineer’s** Camp and other facilities, Laboratories, Transport / Vehicles, and other **planned obsolescence in the Design + Specs** and how to measure and pay in the Bill No 100 or how to provide an intelligent phrase in the letter of tender.
- E \_ expressly **quantified operational running costs** for the specific **Engineers + Employers facilities.**

### >>> Requirements to save money due to comprehensive request for Clarifications:

Where are they defined? Ambiguous descriptions (deliberately?) in in the PCC Contract Data, Method of Measurement and Payment, Drawings, and BoQ (indirect cost structure – [www.gub21.de/12.3+IDC.pdf](http://www.gub21.de/12.3+IDC.pdf)  
Very often, the Drafter of Tender Dossier mislead the Consultants and Contractors.

**Should Donors request in their Financing Agreements / Decisions that the Employer provides the Terms of References / TOR of the Service Contract to the Contractor?**

Your opinion is highly appreciated.

### Our Offer (home-based / site-visit / site inspection (Tender phase)

We offer to any Party (EMP, ENG, CON (M/C+S/C) our services to identify deficiencies in the Procurement documents to **clarify potential disputes or prevent loss**. Do not be silent and think you will be able to connive with the Parties, to solve **the risky Problems**. Clarify for your own bread winning, and not via fraudulent practices / secrete informal arrangements by by-passing the Contract Law.

# Clarification – Preparation of Proposal / Bid

## Identify the loopholes in the Procurement documents

A _ Situation	Conceptual Design / preliminary Procurement design (Employer's Requirements) are provided for a Design + Build + Operate / DBO-Delivery			
B _ Errors in the Employer's Req. SC01.10	The Procurement Design / conceptual design does not meet the Statutory Requirements of the Country's Law. i.e. the Employer's drawings shows a building, which location does not meet the <b>statutory req. of the country's law.</b>			
C _ Limitations	Sort out with Employer the requirements of SC02.2 and SC05.1 Responsibility of "building zone permission" and the time and cost impact.			
D _ Site Data SC04.10 SC04.10(d) Laws	Shall have made available a) ahead of Base Date and b) after Base Date: possession on sub-surface, hydrological and climatic conditions, <b>environmental aspects.</b> "Interpretation" of all data in the sphere of the CON's responsibility Risks, contingencies, other circumstances which may influence the Tender or Works Refer to SC04.10 (a) site , (b) hydro / climatic (c), scope of works / goods- remedy defects <b>SC04.10(d) laws, procedures of regulatory and other authorities and labour practices of the Country,</b> (e.) CON's requirement for access, accommodation, facilities, personnel, power, transport, water and other services. Environmental and social issues should be checked in the Procurement Docs e.g. SC06.7, SC			
E _ Shift – Working Hours clarify PCC 06.5 SC04.10(d)	Sort out the exact shift hours / operational hours allowed >>> i.e. <b>Shift 1 from 08.00-18.00 h , Shift 2 19:00 – 05.00 h with 1 hour lunch.</b> The labour law may deviate.. The Contractor has to obey the individual labour law during his operational / shift hours. e.g. 10 hours per day max (check national law)			
F _ plenty of other issues to consider	<b>Inquire for our sophisticated services:</b> <a href="mailto:Katharina@GuB21.de">Katharina@GuB21.de</a> and/or <a href="mailto:Emma@PPE61.de">Emma@PPE61.de</a>			
SC01.10 Errors in the Employer's Requirements	SC0.2 (a) (b) i, ii, iii Permits, Licences o Approvals	05.1 General Design Obligation 05.2, 05.4, 05.5	04.10 p2 (a) – (e.) Site Data (taking into account of cost and time)	04.10 (d) / 06.5 Working hours individual hours to operational hours
Duty-to-Scrutiny Notice Request instruction regarding its rectification	Employer shall provide – on CON's request – with reasonable assistance ...	Experienced and capable to design EMP's req. / satisfy all regulatory approvals	Review the procure-ment docs and inquire clarifications of your observations during your site visit ahead of bid submission	Let clearly define the Employer's PCC Do not rely on the Employer's Representative consent between individual labour law & Company's operations.
Risk Allocation SC17.1 SC17.3 EMP's Risks	Design Period Commercial Risks Risks of Damage	Op Service Period Commercial R Risks of Damage	Consequences of SC17.6 EMP's Risk SC17.8 CON's Risk	Limitation of Liabilities SC17.8 Indemnities by CON and EMP SC17.12 IIPR

# Tender Clarifications

## Day- / Night shifts / surcharges

<p>CPI 2021 Transparency International <a href="https://www.transparency.org/en/cpi/2021">https://www.transparency.org/en/cpi/2021</a></p> <p>Scores / Rank = Corruption Perception Index CPI 2021</p> <table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">88 /</td><td style="width: 15%;">1</td><td style="width: 15%;">Denmark /</td><td style="width: 15%;">New Zealand</td><td style="width: 15%;"></td><td style="width: 15%;"></td></tr> <tr><td>80 /</td><td>10</td><td>Germany</td><td></td><td></td><td></td></tr> <tr><td>56 /</td><td>42</td><td>Italy</td><td></td><td></td><td></td></tr> <tr><td>55 /</td><td>49</td><td>Georgia</td><td></td><td></td><td></td></tr> <tr><td>49 /</td><td>58</td><td>Armenia</td><td></td><td></td><td></td></tr> <tr><td>45 /</td><td>66</td><td>China</td><td></td><td></td><td></td></tr> <tr><td>40 /</td><td>85</td><td>India</td><td></td><td></td><td></td></tr> <tr><td>38 /</td><td>96</td><td>Turkey</td><td>&lt; 34 /</td><td>115</td><td>Sierra Leone</td></tr> <tr><td>30 /</td><td>129</td><td>Azerbaijan</td><td></td><td></td><td></td></tr> <tr><td>29 /</td><td>136</td><td>Russia</td><td>&lt; 29 /</td><td>136</td><td>Liberia / West-Africa.</td></tr> </table>	88 /	1	Denmark /	New Zealand			80 /	10	Germany				56 /	42	Italy				55 /	49	Georgia				49 /	58	Armenia				45 /	66	China				40 /	85	India				38 /	96	Turkey	< 34 /	115	Sierra Leone	30 /	129	Azerbaijan				29 /	136	Russia	< 29 /	136	Liberia / West-Africa.	
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<p>Dependencies between</p> <p>(a) Abscissa: Corruption Perception Index <b>CPI2021</b></p> <p>(b) Ordinate: <b>Procurement / Tender Dossier</b>: Deliberate uncertainties / intentional ambiguities, and methodical irregularities &amp; (c) <b>“purposeful methods”</b> to achieve</p>	<p>“Purposeful Methods” to achieve:</p> <ol style="list-style-type: none"> <li>(1) scheme to generate unnecessary additional earnings,</li> <li>(2) achieve unjust enrichment <a href="http://www.ppe61.de/S+UnjustEnrichment.pdf">www.ppe61.de/S+UnjustEnrichment.pdf</a></li> <li>(3) misuse “provisional sums” with high Unit Rates (inclusive IDC) in order to expand the Contract Price</li> </ol>
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FIDIC / MDB2010 Issues for	FIDIC / MDB2010 Issues for	FIDIC / MDB2010 Issues for
<b>Service Contracts</b>	<b>Works Contracts</b>	<b>Freelancers, underpaid</b>
<b>Consultant / Engineers (ENG)</b>	<b>Contractors (CON)</b>	<b>servants (SP / service providers)</b>
<b>Clarification</b> during Procurement ahead of submission of the <b>PROPOSAL</b>	<b>Clarification</b> during Procurement ahead of submission of the <b>BID</b>	<b>Clarification</b> ahead of <b>signing</b> the deployment <b>contract</b> .
Labour Law about individual hours per week SC06.4	Labour Law about the individual working hours.	Mission Schedule distributed over the implementation period
Dayshifts foreseen only 22 wd per month, 5 days per week, 8 hours per days	Local recognized rest periods over the <b>production year</b> (public holidays, Sunday works, ...)	Planned <b>Day shifts</b> , range between begin-end (e.g. 12 hours) with a <b>eight (8) hours service input</b>
What does the Works Contract says about defined <b>Working hours / Shift hours SC06.5</b> Shift No 1, Shift No 2	<b>Operational hours</b> (Shift No 1, Shift No 2 with start-end times, 12 h range?) defined in the PCC SC06.5 [Working Hours]	Planned <b>Night shifts</b> , range between begin – end (e.g. 12 hours) with a <b>8 hours service input</b>
Has the Consultant / ENG to consider in his financial proposal the <b>night shift “surcharges”</b> for his personnel / free lancers, to get reimbursed by the Employer?	Does it imply, that the CON is <b>allowed to work 24 hours per day</b> , if NO Shift Hours / Working hours are defined in the PCC SC06.5? In such a case, the	Basic fee / salary refers to eight (8) hours dayshift = 100% payment <b>Overtime</b> (dayshift) above 8h = <b>25% surcharge</b> ; <b>Night shift = 50% surcharge &gt; 150%</b> daily rate
Does the Employer EMP reimburse (a) <b>overtime</b> above 8 hours day, up to 10 hours day shift with a <b>surcharge of 25%</b> of the daily fee inclusive profit margin? (b) What does the local law say about the <b>minimum surcharge for night shifts (50%)</b> (c) The local S/C will also know his resource / experts' input, <b>overtime and night shift expenditures.</b>	CON is able to argue, our <b>WORK PROGRAM</b> considers <b>TWO shifts and/or an as-and-when basis to catch up disruptions and delays.</b> Does the EMP make <b>provisions for the supervisor for two shifts at his own expenses.</b>  Recommendation to EMP: The Engineer can split his offered resources in 50% day and 50% night shift. Ow! Do not worry, the local S/C is the allegedly EMP-source for U.E. <a href="http://www.ppe61.de/06.5+Shifts.pdf">www.ppe61.de/06.5+Shifts.pdf</a>	Refer to salaries and Honorarium structure for “day-shifts” as a baseline: 22 wd/m, 5d/week, 8 h/d minus paid public holidays.  Max. 176 hours per month.  Salary, Honorarium, perks (social issues), profit, per diem/field allowances. <a href="http://www.ppe61.de/S+RFP-FinancialProposal.pdf">www.ppe61.de/S+RFP-FinancialProposal.pdf</a>

Ref to Salaries and Honorarium structure for “day-shifts” (22 wd/m, 5 day/week, 8 hours/day) :

# Working Hours / Shifts

Under construction ...

<b>A</b>	<b>Working Hours defined in Particular Conditions of Contract / PCC</b>	
	Usually the Tender Dossier defines in the PCC SC06.5 the Shifts Numbers ... e.g. 1st range of 12 hours, 2nd shift range of 12 hours	
<b>B</b>	<b>24 hours / 5 days ... excluding locally recognized rest days</b>	
	If no Shift is defined, it implies, that the Contractor is allowed to work 24h/7day, excluding the locally recognized rest days	
<b>C</b>	<b>Employer's default + Engineer's supervision adaption at his own costs</b>	
	If no shift is defined in the Tender Dossier, it is a default of the Employer. He is culpable to sort out the extra supervision input at his own cost. Maybe the Employer stretches the working hours of the Engineer's personnel within the 22 working days p month. e.g. 50% day shift, 50% night shift input, if no working hours are defined in the Service Contract. Hence the Employer can avoid his additional costs for additional supervision expenditures on Site.	Engineer gives "consent", but referral to DAAB might helpful.
<b>D</b>	<b>Labour Law SC06.4</b>	
	Reference to local labour law / individual protection law does not prevent the Contractor to OPERATE 24 h/ day. If no shift times are defined in the PCC, the Contractor has his disposition right to operate 24 hours, 7 days per week excluding the local recognized holidays.	
<b>E</b>	<b>Compliance</b>	
	If the contractor works 24 hours / 7 days a week, he is obliged to comply with the individual protective right of the labour, to work e.g. 5 days @10 hours per week. Hence the Contractor has to deploy enough labour, to be able to rotate them after 50 hours per week of time input (without breaks for breakfast, lunch, and dinner).	
Text	<a href="http://www.ppe61.de/HUB123.pdf">www.ppe61.de/HUB123.pdf</a>	
	Shift Definition in the Procurement Document / Tender Dossier to define, unless otherwise the Employer is culpable for his default. <b>1 _ Individual Labour Law – to protect the labours / Clause 6</b> A _ 8 hours shift plus 1 hour lunch B _ 10 hours shift plus 3 days off C _ 12 hours shift followed by several days off 2_ Most important for the Supervision <b>2 _ Allowable Operational hours / Production Hours / Working hours of the "Contractor".</b> The Shift shall be expressively defined in the <b>PCC / Contract Data SC06.5 [Working hours]</b> Allowable Production Time <b>Shift No 1</b> = 08.00 – 20.00 h Allowable Production Time <b>Shift No 2</b> = 20.00 – 08.00 h <b>3 _ Contractor's Compliance</b> The Contractor has to consider this circumstances, when he organizes and executes his work, that the <b>utilization of the Labours</b> do comply with the individual Labour Law.	