SURAT PEKELILING PERBENDAHARAAN BIL. 4 TAHUN 2003

Semua Ketua Setiausaha Kementerian,
Semua Ketua Jabatan Persekutuan,
Semua YB Setiausaha Kerajaan Negeri,
Semua Ketua Badan Berkanun Persekutuan,
Semua Pihak Berkuasa Kerajaan Tempatan,
Semua Ketua Pegawai Eksekutif Syarikat Kerajaan.

BAYARAN TERUS KEPADA SUB KONTRAKTOR

Surat Pekeliling Perbendaharaan (SPP) ini bertujuan memaklumkan kepada semua agensi mengenai peraturan bayaran terus kepada sub kontraktor.

2. Pada masa ini bayaran terus hanya dibenarkan kepada Nominated Sub Contractor (NSC). Walau bagaimanapun untuk mengatasi masalah sub-kontraktor yang tidak dibayar, agensi adalah dibenarkan membuat bayaran terus kepada sub kontraktor, tertakluk kepada syarat-syarat berikut:

(i) bayaran kemajuan boleh dibuat terus kepada sub kontraktor sehingga 90% daripada jumlah nilai kerja sub kontraktor berkenaan;

(ii) baki sebanyak 10% lagi hendaklah dibayar kepada Kontraktor Utama selepas CPC dikeluarkan dan Agensi hendaklah mempastikan Kontraktor Utama membayar sub kontraktor selepas tamat tempoh tanggungan kecacatan;

(iii) syarat bayaran terus kepada sub kontraktor hendaklah dimasukkan ke dalam dokumen tender dan dokumen kontrak;

(iv) sub kontraktor yang berkenaan hendaklah berdaftar dalam kelas yang bersesuaian, bertaraf Bumiputera dan kontraktor tempatan yang beroperasi di kawasan/daerah di mana projek dilaksanakan;
(v) syarat bayaran terus kepada sub kontraktor hendaklah juga dimasukkan dalam Surat Setuju Terima (LOA) kepada kontraktor yang berjaya dan kontraktor dikehendaki mengemukakan senarai lengkap sub kontraktonya semasa mengembalikan LOA yang ditandatangani;

(vi) kontraktor utama dikehendaki menandatangai Surat Ikatan Serah Hak (deed of assignment) dengan sub kontraktor untuk bayaran bagi skop dan nilai kerja yang dilaksanakan oleh sub kontraktor berkencana mengikut format seperti di Lampiran A dan Lampiran B;

(vii) agensi hendaklah memastikan tiada penyerahan hak bayaran dibuat oleh kontraktor utama kepada pihak lain bagi projek selain senarai sub kontraktor yang dibekalkan;

(viii) kontraktor utama tidak boleh meminda senarai sub kontraktonya kecuali mendapat kebenaran bertulis daripada Kerajaan; dan

(ix) kontrak hendaklah mempunyai klausu indemnity bagi menjaga kepentingan Kerajaan.

3. Kaedah dan prosidur bayaran seperti yang digariskan dalam SPP Bil. 4 Tahun 2001 boleh diguna pakai bagi tujuan bayaran di bawah Surat Pekeliling ini bagi projek yang diselia oleh PMC.

4. SPP ini berkuat kuasa mulai tarikh surat ini.

Sekian, terima kasih.

“BERKHIDMAT UNTUK NEGARA”

Saya yang menurut perintah,

(Tan Sri Dr. Samsudin bin Hitam)
Ketua Setiausaha Perbendaharaan

10 Julai 2003

s.k.

Ketua Setiausaha Negara
Ketua Audit Negara Malaysia
Akauntan Negara Malaysia
Semua YB Pegawai Kewangan Negeri
LAMPIRAN A

DEED OF ASSIGNMENT
(Security for direct payments from a third party)

THIS DEED OF ASSIGNMENT is made the ........ day of ..................... 20............... between ......................................................, a company incorporated under the laws of Malaysia and having its registered office at ................................................................., (hereinafter referred to as "the Assignor") of the one part and .................................................., a company incorporated under the laws of Malaysia and having its registered office at ................................................................., (hereinafter referred to as "the Assignee") of the other part.

WHEREAS

A. The Assignor has been awarded by the Government of Malaysia (hereinafter referred to as the Government") the contract with the reference number ................................................................. (hereinafter referred to as "the Contract") for .................................................................................................................. (RM .......................................................... ) only (hereinafter referred to as "The Contract Sum").

B. The Assignor has caused work to be executed and/or is desirous of causing *work /supply to be executed and the Assignee has agreed to execute certain *work/supply namely ...................................................... (hereinafter referred to as *'The Sub-contract Work"/ the Sub-contract Supply) for the Assignor in the fulfillment of the Assignor’s obligations under the Contract.

C. The Assignor is desirous of assigning to the Assignee moneys due and payable to the Assignor under the Contract as payment for the *Sub-contract Work/ Sub-contract Supply, up to a maximum value of Ringgit ................................................................. (RM .......................................................... ) only (hereinafter referred to as the "Assigned Sum").

D. The Government through its authorised representative has given its consent in a letter dated ......................... to the Assignor to assign its rights, interest and title in the Assigned Sum to the Assignee. The said letter is attached hereto as Appendix A.
NOW THIS DEED WITHNESSETH as follows:

1. **Restriction on this Deed**

   The terms of this Deed of Assignment shall be subject to the terms and conditions imposed by the Government or its authorized representative in granting its assent to this Assignment.

2. **Assignment**

   In consideration of the Assignee having executed and/or agreeing to execute the *Sub-contract Work/Sub-contract Supply, the Assignor hereby absolutely assigns to the Assignee moneys payable now or hereinafter due and payable to the Assignor under the Contract, not exceeding the Assigned Sum.

3. **Irrevocable Assignment**

   This assignment shall be irrevocable and shall remain in force for so long as the Assigned Sum is due and payable to the Assignor by the Government.

4. **Exclusion of Nominated Sub-contractors/Suppliers**

   For the purposes of this Assignment, moneys due and payable to the Assignor under the Contract shall be deemed to exclude moneys due and payable to nominated sub-contractors and nominated suppliers who, in accordance with the terms and conditions of the Contract shall be paid direct by the Government to the nominated sub-contractors and nominated suppliers.

5. **Payment**

   Subject to the provisions of the Companies Act 1965 (Act 125) the Assignee shall be paid the value of the *Sub-contract Work/Sub-contract Supply executed from the moneys due and payable to the Assignor under the Contract in accordance with the terms and conditions of the Contract.

6. **Interim Payment**

   The amount to be paid to the Assignee in each interim payment or any other payment shall be ascertained based on claims certified by the Assignor or his authorized representative and submitted by the Assignee to the Superintending Officer named in the Contract or his authorized representative not later than 3 days before the date of interim valuation.

7. **Insufficient Payment**

   7.1 In the event of the money due and payable to the Assignor in an interim payment is insufficient to pay the amount due to the Assignee in respect of the *Sub-contract Work/Sub-contract Supply executed, the deficiency shall be paid to the Assignee in the next and subsequent interim payment(s).
7.2 If upon final payment under the Contract no money is received by the Assignee or the amount received by the Assignee is less than the total value of the *Sub-contract Work/Sub-contract executed, the value of the *Sub-contract Work/Sub-contract Supply that remains unpaid shall be a debt due from the Assignor to the Assignee.

8. **Receipt Issued**

The Assignor covenants that any receipt issued by the Assignee in respect of any payment made by the Government or its authorized representative shall be a sufficient and valid discharge of the assignment under Clause 2 to the extent of such payment.

9. **Undertaking**

The Assignor undertakes to do all things and acts necessary to ensure that the Government pays to the Assignee moneys otherwise due and payable to the Assignor under the Contract in respect of the *Sub-contract Work/Sub-contract Supply executed by the Assignee.

10. **Notification of Assignment**

The Assignor shall notify the Government of the execution of this Deed of Assignment by lodging a stamped copy thereof with the Government or its authorised representative.

11. **Incidental Charges**

Any incidental charges including legal fees for this Deed of Assignment and the stamp duty thereof shall be borne by the Assignor.

12. **Successors-In-Title**

This Deed of Assignment shall be binding upon the successors-in-title of the parties hereto and, if the party is an individual, upon his heirs, executors and personal representatives.
IN WITNESS WHEREOF the Parties hereunto set their seal and hand respectively on the day and year first set out above.

SIGNED for and behalf of

…………………………………….. )
…………………………………….. )
…………………………………….. )
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…………………………………….. )
…………………………………….. )
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……………………………………. )

(Signature of Assignor)

In the presence of :

……………………………………
……………………………………
……………………………………   __________________________
……………………………………   __________________________

(Signature of Witness)

SIGNED for and behalf of

…………………………………….. )
…………………………………….. )
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……………………………………. )
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(Signature of Assignor)

In the presence of :

……………………………………
……………………………………
……………………………………   __________________________
……………………………………   __________________________

(Signature of Witness)
THE CONSENT OF THE GOVERNMENT OF MALAYSIA TO THE DEED OF ASSIGNMENT FOR DIRECT PAYMENT TO A THIRD PARTY

Reference: ... ......................................................... Date:.......................  

(Name and address of the Ministry/Department) ........................................ 
........................................................................................................ 
........................................................................................................  
To: .................................................................  
(Contractor) .........................................................  
........................................................................................................  
CONTRACT NO : .........................................................  
SUB-CONTRACT/SUPPLY.........................................................  

WORK  
........................................................................................................  
I refer to your letter ................................................................. dated  
........................................................................................................ seeking the consent of the Government of Malaysia to your proposal to assign part of the Contract Sum by a Deed of Assignment to  
.............................................................................................................., the Assignee.  

2. This to convey the Government's consent to the said assignment as contained in the Deed of Assignment, subject to the terms as follows:

   a. Any obligation imposed upon the Government by the Deed of Assignment shall not in any way prejudice or affect any rights of the Government or the powers of the Superintending Officer under the terms and conditions of the Contract, including those relating to direct payments to nominated sub-contractors and nominated suppliers and deductions from any money otherwise due to you under the Contract.

   b. Any payment made to the Assignee shall be deemed to be a payment as if the same is paid to you under the terms and conditions of the Contract and shall constitute a sufficient and valid discharge of the obligations of the Government under the Contract to the extent of such payment.

   c. No terms of payment including any term for the payment of interest for delayed payments which the Assignee may impose upon you shall be imposed upon the Government by the Deed of Assignment.
d. You shall be liable and shall indemnify and hold the Government harmless from all costs, claims, damages, expenses, liabilities, losses whatsoever incurred by the Assignee howsoever arising from the Deed of Assignment from the rights which have been assigned to the Assignee in accordance with the Deed of Assignment.

3. Kindly acknowledge receipt of this letter and confirm acceptance by the Assignee and yourself of the terms stipulated above by appending your signature and returning the same to me.

Yours faithfully,

........................................
(Superintending Officer)

1/We acknowledge receipt of the above assent of the Government and confirm my/our acceptance of the terms imposed herein.

........................................  ........................................
Signature of Assignor                Signature of Assignee

Name:

Designation :

for and on behalf of

........................................  ........................................
(Seal or Chop of Assignor)           ( Seal or Chop of Assignee)