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ECONOMIC COMMISSION FOR EUROPE
G E N E V A

G U I D E
ON DRAWING UP CONTRACTS
FOR LARGE INDUSTRIAL WORKS

ECE/TRADE/117

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New York, 1973

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EKONOMSKA KOMISIJA ZA EVROPU
Ž E N E V A

V O D I Č
ZA SASTAVLJANJE UGOVORA ZA IZGRADNJU
VELIKIH INDUSTRIJSKIH OBJEKATA

ECE/TRADE/117

UJEDINJENI NARODI
New York, 1973

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I. INTRODUCTION

PURPOSE AND SUBJECT OF THE GUIDE

1. (i) The purpose of this Guide is to facilitate the drawing up of international contracts for large industrial works constituting an important element in economic and technical co-operation, and covering the supply and erection of industrial plant, as well as building and civil engineering work. These contracts provide generally for longer and more diversified relations than in usual contracts for the supply of plant and machinery.

(ii) For this purpose, the Guide lists the various contractual procedures which may be adopted for such works, indicating the problems which such procedures may raise and the consequences which they may entail.

(iii) However, the Guide provides no advice on which procedures to adopt or which contractual provisions to apply. Its purpose is essentially descriptive. Nor is the Guide an exhaustive treatise; it is simply a memorandum. With regard to the clauses commonly used for the supply and erection of industrial plant and for the construction of buildings or civil engineering work, it merely refers to the existing standard forms.¹⁾

¹⁾ For the supply and erection of industrial plant, basic documents have been published by the United Nations Economic Commission for Europe: General Conditions for the Supply of Plant and Machinery for Export, Nos. 188 and 574; General Conditions for the Supply and Erection of Plant and Machinery for Import and Export, Nos. 188 A and 574 A; Additional Clauses for Supervision of Erection of Plant and Machinery Abroad, Nos. 188 B and 574 B; General Conditions for the Erection of Plant and Machinery Abroad, Nos. 188 D and 574 D; General Conditions of Sale for the Import and Export of Durable Consumer Goods and of other Engineering Stock Articles, No. 730.

I U V O D

SVRHA I PREDMET VODIČA

1. (i) Svrha ovog Vodiča je da olakša sastavljanje međunarodnih ugovora za izgradnju velikih industrijskih objekata koji predstavljaju važan elemenat u ekonomskoj i tehničkoj suradnji, a koji obuhvaćaju isporuku i montažu samog industrijskog postrojenja zajedno s izvodenjem gradjevinskih radova i to kako onih visokogradnje, tako i onih niskogradnje. Ovi se ugovori uglavnom zaključuju na dulje vrijeme i u sebi sadrže složenije odnose nego što je to slučaj kod običnih ugovora za isporuku postrojenja i opreme.

(ii) U tom cilju Vodič izlaže različite postupke koji mogu biti usvojeni za zaključenje takvih ugovora, ističući istovremeno probleme koji se mogu kod takvih postupaka pojaviti kao i posljedice do kojih može doći.

(iii) Međutim, Vodič ne daje savjet o tome koji postupak treba usvojiti ili kakvu ugovornu odredbu treba primijeniti. Svrha Vodiča u biti je opisnog karaktera. Isto tako Vodič ne iscrpljuje sve probleme; on je jednostavno podsjetnik. U pogledu uobičajenih odredaba koje se upotrebljavaju kod isporuke i montaže industrijskog postrojenja i kod izvodenja gradjevinskih radova, Vodič se jednostavno poziva na već postojeće standardne opće uvjete.¹⁾

¹⁾ Osnovni dokumenti za isporuku i montažu industrijskih postrojenja, objavljeni od Ekonomске komisije za Evropu UN jesu: Opći uvjeti za isporuku postrojenja i opreme u izvozu, br. 188 i 574; Opći uvjeti za isporuku i montažu postrojenja i opreme u izvozu i uvozu, br. 188 A i 574 A; Dodatne odredbe za nadzor nad montažom opreme i postrojenja u inozemstvu, br. 188 B i 574 B; Opći uvjeti za montažu postrojenja i opreme u inozemstvu, br. 188 D i 574 D; Opći uvjeti za prodaju u izvozu i uvozu trajnih potrošnih dobara i druge serijske opreme, br. 730.

THE PARTICIPANTS

2. (i) International contracts for the construction of large industrial works involve a set of participants whose number and function may vary from case to case: the client, the supplier or suppliers of machinery and equipment or of industrial plant and the building or civil engineering contractor or contractors. In some countries, a design office or a consulting engineer also takes part in the transaction. There are also cases in which suppliers of technology or of documentation may be involved as contracting parties.

(ii) The functions fulfilled by these participants and the responsibilities which they assume depend on the type of contract adopted; therefore, it may happen that the same participant assumes different functions and responsibilities according to the contractual relations resulting from the kind of contract used.

MAIN CATEGORIES OF CONTRACTS

3. An important distinction between the various combinations of contracts which are possible in this field resides in the fact that the client may conclude with the other participants:

The Council for Mutual Economic Assistance (CMEA) has published "General Conditions of Supply of Goods between Organizations of the Member Countries of the CMEA".

For building and civil engineering work the International Federation of European Contractors of Building and Public Works (FIEEBTP) and the International Federation of Consulting Engineers (FIDIC) have drawn up "Conditions of Contract (International) for Works of Civil Engineering Construction". The CMEA has also drawn up General Conditions for the Erection and Performance of other Technical Services related to the Supply of Machinery and Equipment between Organizations of the Member Countries of the CMEA.

SURADNICI

2. (i) Medjunarodni ugovori za izgradnju velikih industrijskih postrojenja uključuju niz suradnika kojih se broj i djelatnost mijenja od slučaja do slučaja; investitor, isporučitelj ili isporučitelji opreme i postrojenja te izvodjač gradjevinskih radova niskogradnje ili visokogradnje i izvodjači takvih radova. U nekim zemljama u ovake poslove uključuju se i projektni uredi ili inženjeri konzultanti. Ima također slučajeva u kojima isporučitelji tehnologije ili projektne dokumentacije također mogu biti posebne ugovorne stranke.

(ii) Djelatnost koju vrše ovi suradnici i odgovornost koju oni preuzimaju ovisi o vrsti ugovora koji se zaključuje; zbog toga može se dogoditi da isti suradnik preuzme različitu djelatnost i odgovornost u skladu s ugovornim odnosima koji proizlaze iz vrste ugovora koja je u danom slučaju upotrijebljena.

GLAVNE VRSTE UGOVORA

3. Važna razlika koja je moguća izmedju različitih vrsta ugovora u ovom području leži u činjenici da investitor može s drugim suradnicima zaključiti slijedeće vrste ugovora:

Savjet za medjusobnu ekonomsku pomoć (SEV) objavio je "Opće uvjete za isporuku robe izmedju organizacija zemalja članica SEV-a".

Za gradjevinske radove niskogradnje i visokogradnje Medjunarodna federacija evropskih izvodjača gradjevinskih i javnih radova (FIEEBTP) i Medjunarodna federacija inženjera konzultanata (FIDIC) sastavile su "Uvjete ugovora (medjunarodnog) za izvodjenje gradjevinskih radova." Gore navedeni odbor SEV-a također je sastavio Opće uvjete za montažu i izvodjenje drugih tehničkih uvjeta koji se odnose na isporuku opreme i postrojenja izmedju organizacija zemalja članica SEV-a.

(i) Separate contracts, for the supply and erection of industrial plant, on the one hand, and for the building and civil engineering work on the other; or

(ii) A comprehensive contract, covering both the building and civil engineering work and the supply and erection of industrial plant, when the client's contracting party (main contracting party) assumes the responsibility for the works or supplies as a whole although the performance of part of the works and supplies may be transferred by him to sub-contractors; or

(iii) A turnkey contract covering all services as defined in paragraph 25 (ii). Paragraph 11 and Chapter V discuss whether this is a distinct type of comprehensive contract.

SEPARATE CONTRACTS

4. (i) Responsibility of the parties. Where the client concludes separate contracts with a supplier or suppliers of industrial plant, and with building or civil engineering contractors, each of those parties is directly responsible to the client for the supplies or for the performance of the work entrusted to him under the terms of the contract which binds him to the latter.

(ii) Co-ordination. Since the client is the only one of the parties contractually bound to all the others, it will naturally be his responsibility to co-ordinate work and supplies so as to ensure that the various participants do not hamper each other and that their work is performed in the correct sequence. In those cases where a consulting engineer has been appointed by the client, he may be entrusted on his behalf with the co-ordination of work and supplies.

(iii) Consequences of a failure of co-ordination. If there is no such co-ordination, the client may be held responsible

(i) Odvojeni ugovori za isporuku i montažu industrijskog postrojenja, s jedne strane, i za izvršenje gradjevinskih radova s druge strane; ili

(ii) Jedinstveni ugovor koji obuhvaća gradjevinske radove i isporuku i montažu industrijskog postrojenja, kad ugovorna strana s investitorom (glavni ugovarač) preuzme odgovornost za radove i isporuke u cijelosti, iako izvršenje pojedinih dijelova radova i isporuka može biti prenijeti na različite podugovarače; ili

(iii) Ugovor "ključ u ruke" koji obuhvaća sve usluge kako su one navedene u paragrafu 25 (ii). Paragraf 11 i Poglavlje V razmatraju da li se u ovom slučaju radi o posebnoj vrsti jedinstvenog ugovora.

ODVOJENI UGOVORI

4. (i) Odgovornost stranaka. U slučajevima kad investitor zaključuje odvojene ugovore s isporučiteljem ili s isporučiteljima industrijskog postrojenja i s izvodjačima gradjevinskih radova, tada je svaka od ovih stranaka direktno odgovorna investitoru za isporuke ili za izvršenje radova koji su im povjereni u smislu uvjeta ugovora kojim su vezani s investitorom.

(ii) Koordinacija. Obzirom da je investitor jedina stranka koja je ugovorom vezana sa svim ostalima, prirodno je da kao dio njegove odgovornosti ulazi i koordinacija izvodenja radova i isporuka da bi se osiguralo da različiti suradnici ne onemogućavaju ili ne otežavaju rad jedan drugome i da se njihov rad odvija u pravilnom redoslijedu. U slučajevima u kojima je imenovan poseban inženjer konzultant od strane investitora jedna od njegovih dužnosti može biti i koordinacija radova i isporuka u ime investitora.

(iii) Posljedice propusta u koordinaciji. Ako nema takve koordinacije investitor se može držati odgovornim za

for the effect which any delay in the performance of work and supplies of one of the participants due to non-observance of time-limits, changes made in course of execution, etc., may have on the obligations of other participants, e.g. times-limits, penalties for delay, beginning of guarantee period, etc.

(iv) Site. If the initial studies which culminate in the planning of a project and in the survey and selection of the site are carried out by the client himself or by a design bureau or by a consulting engineer, the client assumes the responsibility for this preliminary work vis-à-vis the supplier of the industrial plant and vis-à-vis the building or civil engineering contractor; the contract may also specify that the building or civil engineering contractor is obliged to check the project data concerning the site on his own responsibility.

(v) The client may also place on the building or civil engineering contractor the responsibility for solving any problems connected with the site.

COMPREHENSIVE CONTRACTS

5. Types

(i) The client may conclude a main contract with the supplier of industrial plant, the building or civil engineering contractor playing only a subsidiary role and concluding a sub-contract with the supplier.

(ii) The roles of the supplier and contractor may be reversed; this is done in some countries, or when the building work is worth more than the industrial plant, or when such work constitutes the main subject of the transaction, as in the case of construction of a dam, an underground railway, a hospital, etc.

posljedice koje može imati zakašnjenje u izvršenju rada i isporuka bilo kojeg od suradnika a do čega bi došlo zbog nepoštivanja vremenskih rokova, promjena učinjenih u toku izvršenja itd, što može utjecati na obveze drugih suradnika kao npr. vremenskih rokova, penala za zakašnjenje, početka garantnog razdoblja itd.

(iv) Radilište. Ako početne studije koje dovode i dovršavaju s planiranjem nekog objekta isto kao i istražni radovi i izbor radilišta budu obavljeni i izvršeni od samog investitora ili od projektnog ureda ili od inženjera konzultanta, investitor sam preuzima odgovornost za te prethodne radove u odnosu prema isporučitelju industrijskog postrojenja i u odnosu prema izvodjaču gradjevinskih radova; ugovor može također posebno odrediti da je izvođač gradjevinskih radova dužan provjeriti podatke u projektu koji se odnose na radilište na vlastitu odgovornost.

(v) Investitor može također povjeriti izvodjaču građevinskih radova odgovornost za rješenje bilo kakvih problema vezanih uz radilište.

JEDINSTVENI UGOVORI

5. Vrste ugovora

(i) Investitor može zaključiti ugovor s isporučiteljem industrijskog postrojenja s time da izvodjač gradjevinskih radova ima samo pomoćnu ulogu na taj način da zaključi podugovor s isporučiteljem.

(ii) Uloge isporučitelja i izvodjača mogu biti i obratne; ovo se često i primjenjuje u nekim zemljama kad su gradjevinski radovi vredniji od postrojenja, ili kad ti radovi predstavljaju glavni predmet ugovora kao što je to slučaj kod izgradnje brana, podzemne željeznice, bolnice itd.

(iii) The supplier and contractor may together set up a joint venture,² which concludes a single contract with the client.

6. Responsibility of the parties arising from the connexion between the main contract and the subsidiary contracts

(i) When a supplier of industrial plant is the main contracting party and he sub-contracts the building or civil engineering work, it is necessary that the main contract contains provisions which enable the main contracting party to sub-contract the building or civil engineering work, using appropriate conditions of contract for the performance of such work.

(ii) When the building or civil engineering contractor is the main contracting party and sub-contracts the supply and erection of electrical, mechanical, or other plant, the same principle applies.

(iii) In both cases, if the main contract is based on existing standard forms (see note to paragraph 1 (iii), the contract must provide, if necessary, that these forms will be applied with modifications and additions, in order to take into consideration the particular conditions of the work for which the main contracting party assumes responsibility.

(iv) If these principles are not observed, the main contracting party or sub-contractor may find that he has assumed a responsibility which is not appropriate for the type of work which he has to perform.

7. Sub-contractor nominated by the client

(i) In cases where the client nominates the sub-contractor or sub-contractors, or any one of them, the main contracting party, after verifying the suitability of the sub-contractor

²See footnote 4.

(iii) Isporučitelj i izvodjač mogu obrazovati zajednički pothvat (Joint venture),²⁾ koji zajednički pothvat zaključuje zatim jedinstveni ugovor s investitorom.

6. Odgovornost stranaka do koje dolazi vezom izmedju glavnog ugovora i pomoćnih ugovora

(i) U slučajevima kad je isporučitelj industrijskog postrojenja glavna ugovorna strana i kad on pod-ugovori izvođenje gradjevinskih radova, tada je potrebno da glavni ugovor sadrži odredbe koje će omogućiti glavnoj ugovornoj strani da pod-ugovori gradjevinske radove, upotrebjavajući pri tome odgovarajuće uvjete ugovora za izvršenje tih radova.

(ii) U slučajevima kad je izvodjač gradjevinskih radova glavna ugovorna strana i kad on pod-ugovori isporuku i montažu električne, mehaničke ili kakve druge opreme, primijenit će se isti princip.

(iii) U oba slučaja ako se glavni ugovor osniva na postojećim općim uvjetima (vidi bilješku kod paragrafa 1 (iii)), tada ugovor treba predviđjeti, ako je to potrebno, da ovi opći uvjeti budu primjenjeni s izmjenama i dodacima, da bi se uzele u obzir posebne okolnosti i uvjeti radova za koje glavna ugovorna strana preuzima odgovornost.

(iv) Ako se ovi principi ne bi poštivali, tada se glavna ugovorna strana ili pod-ugovarač može naći u situaciji da preuzme odgovornost koja ne odgovara vrsti ugovora koji glavni ugoverač mora izvršiti.

7. Pod-ugovarač imenovan od investitora

(i) U slučajevima kad investitor imenuje pod-ugovarača ili pod-ugovarače, ili bilo kojega od njih, glavna ugovorna stranka, nakon što je provjerila podobnost pod-ugovarača

²⁾Vidi bilješku 4.

or sub-contractors thus appointed, may assume vis-à-vis the client responsibility for the sub-contracting work performed by him or them.

(ii) The main contracting party may also co-operate with the sub-contractor (for instance, by giving him the appropriate technical assistance) to enable him to perform the sub-contracting work in such a way as to permit the main contracting party to assume responsibility for it vis-à-vis the client.

(iii) On the other hand, there are cases in which the main contracting party does not assume vis-à-vis the client responsibility for a sub-contractor whom he has not chosen. In that case, there is a main contract covering all the services of the main contracting party (both for the supply and erection of industrial plant and for the building and civil engineering work) and one or more separate contracts for the execution of which the main contracting party is not responsible.

8. Co-ordination. The main contracting party co-ordinates the work for which he is responsible vis-à-vis the client. The client, possibly by means of an appointed consultant engineer, ensures co-ordination between the work covered by the main contract and that covered by a separate contract.

9. Joint venture

(i) Responsibility of the joint venture. When the supplier or suppliers of industrial plant and the building or civil engineering contractor are members of a joint venture, the members may agree to assume joint and several responsibility vis-à-vis the client, in addition to the over-all responsibility assumed by the joint venture itself. In some countries, this solution arises by law from the juridical form chosen by the parties for the joint venture. In others, it can be achieved only under a special agreement.

kojega je investitor na taj način imenovao, može preuzeti u odnosu prema investitoru odgovornost za pod-ugovorene radove koje će pod-ugovarač obaviti.

(ii) Glavni ugovarač može također suradjivati s pod-ugovaračem (npr. dajući mu odgovarajuću tehničku pomoć) kako bi mu omogućio da izvrši pod-ugovoreni rad na takav način da dopusti i omogući da glavni ugovarač preuzme odgovornost u odnosu prema investitoru.

(iii) S druge strane ima slučajeva u kojima glavni ugovarač ne preuzima odgovornost u odnosu prema investitoru za pod-ugovarača kojeg nije sam izabrao. U takvom slučaju postoji glavni ugovor koji obuhvaća sve usluge glavnog ugovarača (i za isporuku i montažu industrijskog postrojenja i za gradjeinske radove), i jedan ili više odvojenih ugovora za izvršenje kojih glavni ugovarač nije odgovoran.

8. Koordinacija. Glavni ugovarač koordinira rad za koji je odgovoran u odnosu prema investitoru. Investitor, vjerojatno putem imenovanog inženjera konzultanta, osigurava koordinaciju rada obuhvaćenog glavnim ugovorom i rada obuhvaćenog odvojenim ugovorom.

9. Zajednički pothvat (Joint Venture)

(i) Odgovornost zajedničkog pothvata. Kad su isporučitelj ili isporučitelji industrijskog postrojenja i izvodjač gradjeinskih radova članovi zajedničkog pothvata, oni se mogu složiti da preuzmu solidarnu odgovornost u odnosu prema investitoru povrh sveukupne odgovornosti koju je sam zajednički pothvat preuzeo. U nekim zemljama ovo rješenje nametnuto je po zakonu i ono proizlazi iz pravnog oblika koji su stranke u takvom zajedničkom pothvatu izabrale. U drugim zemljama ovakvo rješenje može se postići samo po posebnom sporazumu.

VARIANTS OF THE MAIN TYPES OF CONTRACT

12. The main types of contract for large industrial works, including building and civil engineering work, generally have many variants which can considerably alter the nature of the relationships between the client and his various contracting parties. Consequently, the preceding comments on the main types of contract must be qualified before they can be applied to individual cases. When individual contracts are being drawn up, the general observations applicable to all the various types of contract may be influenced by factors connected with the actual content of the particular transactions involved.

II. SEPARATE CONTRACTS

EXTREME TYPE OF SEPARATE CONTRACTS

13. (i) The method of separate contracts for large industrial works, including building and civil engineering work, is encountered in particular where the client is also the author of the industrial process which will be used in the works to be built.

(ii) In this case, the comments in paragraph 4 are applicable as they stand. The client concludes a separate contract with each of his contracting parties, using normally the standard contract forms for each type of contract concluded. The parties are responsible for the performance of their work or services in accordance with the standard applicable to it. The fact that the different types of work which they perform all form part of a single project does not, in principle, modify the contractual relationships between the client and each of the contracting parties, since the responsibility for the successful completion of the over-all project rests with the client, subject to recourse against the other parties to the contract to the extent as specified in the individual contracts.

VARIJANTE GLAVNIH VRSTA UGOVORA

12. Glavne vrste ugovora za izgradnju velikih industrijskih postrojenja, uključujući i gradjevinske rade, općenito govoreći imaju mnogo varijanata koje mogu u znatnoj mjeri izmijeniti prirodu odnosa izmedju investitora i različitih ugovornih strana. Dosljedno tome prethodne napomene o glavnim vrstama ugovora moraju se pravilno kvalificirati, tj. svestrati, prije nego što budu primijenjene na pojedinačne slučajeve. Prilikom sastavljanja pojedinih ugovora opće primjedbe koje se odnose na različite vrste ugovora mogu doći pod utjecaj činilaca povezanih sa stvarnim sadržajem svakoga pojedinog posla koji se zaključuje.

II ODVOJENI UGOVORI

KRAJNJE VRSTE ODVOJENIH UGOVORA

13. (i) Primjena odvojenih ugovora za izgradnju velikih industrijskih objekata, uključivo i izvodjenje gradjevinskih radeva, veoma se često susreće u onim slučajevima kad je investitor sam i stvaralač industrijskog postupka koji će se primjenjivati u objektu kad on bude izgradjen.

(ii) U ovom slučaju napomene u paragrafu 4. mogu se primijeniti kako su tamo iznijete. Investitor će zaključiti odvojeni ugovor sa svakom od svojih ugovornih stranaka, upotrebljavajući pri tome opće uvjete za svaku vrstu ugovora koji zaključuje. Stranke su odgovorne za izvršenje preuzetih radeva ili usluga u skladu s uvjetima koji se na to primjenjuju. Činjenica da različite vrste radeva koje oni izvršavaju čine dio jednog projekta, u principu, što ne mijenja ugovorne odnose izmedju investitora i svake pojedine ugovorne stranke, obzirom da odgovornost za uspješni dovršetak cijelog projekta ostaje na investitoru, s time da se investitor može poslužiti svojim pravom iz ugovora prema drugim ugovornim stranaka, već prema tome kako je to odredjeno u pojedinačnim ugovorima.

(ii) Relations between the members of a joint venture.

Within the joint venture, it is useful to stipulate-in a special agreement-the functions and responsibilities of each member, such an agreement should, in particular, specify the manner in which the responsibility of the members of the joint venture vis-à-vis the client is to be shared.

(iii) Co-ordination and liaison with the client. When the agreement establishing the joint venture does not stipulate that one of the parties shall represent it vis-à-vis the client, it should at least be specified who is responsible for co-ordinating the work and for maintaining liaison between the client and the joint venture.

10. Site

(i) The comments under the heading "separate contracts" in paragraph 4 (iv) and (v) relating to the site apply by extension to comprehensive contracts.

(ii) There is no hard and fast rule assigning the responsibility for work connected with the site to one party rather than to another. According to the circumstances, this work may be carried out either by the client or by the main contracting party, although when the client has carried out the planning and prepared a project, the contract sometimes specifies that the main contracting party accepts the project and all its implications on his responsibility.

TURKEY CONTRACTS

11. The turnkey contract appears as a more developed and complete form of the comprehensive contract. In both types of contract the client seeks a single contracting party who shall be responsible for all or for a large part of the work; the difference between these two types of contract appears to be often ill-defined in practice; this difference is examined in greater detail in chapter V.

(ii) Odnosi izmedju članova zajedničkog pothvata.

Unutar zajedničkog pothvata korisno je posebnim sporazumom ugovoriti djelatnost i odgovornost svakog člana. Takav sporazum treba posebno predvidjeti način na koji će se odgovornost članova zajedničkog pothvata dijeliti u odnosu prema investitoru.

(iii) Koordinacija i veze s investitorom. Kad sporazum o osnivanju zajedničkog pothvata ne određuje da će jedna od stranaka predstavljati sve ostale u odnosu prema investitoru, treba u najmanju ruku predvidjeti tko će biti odgovoran za koordinaciju rada i za održavanje veze izmedju investitora i zajedničkog pothvata.

10. Radilište

(i) Primjedbe sadržane u poglavljju pod naslovom "Odvojeni ugovori" u paragrafu 4 (iv) i (v) koje se odnose na radilište primjenjuju se na isti način i kod jedinstvenih ugovora.

(ii) Ne postoji pravilo po kojem bi se odgovornost za radove vezane s radilištem morala dosuditi nekoj od stranaka prije nego nekoj drugoj. Ovisno o okolnostima taj rad može obaviti i investitor ili glavni ugovarač, iako u slučajevima kad je investitor izvršio planiranje i pripremio projekat, ugovor ponekad određuje da glavni ugovarač prihvaca sam projekat i sve posljedice koje iz njega proizlaze i to na vlastitu odgovornost.

UGOVORI "KLJUČ U RUKE"

11. Ugovori "ključ u ruke" izgledaju kao razvijeniji i potpuniji oblik jedinstvenog ugovora. U obje vrste ugovora investitor traži samo jednu ugovornu stranu koja će biti odgovorna za sav posao ili za njegov najveći dio; razlika izmedju ove dvije vrste ugovora često nije dovoljno jasna u praksi; ova razlika podrobnije se ispituje u poglavljju V.

RISKS INCURRED BY THE CLIENT

14. (i) The client will thus have to bear the financial consequences of defects of the plant, if it proves impossible to establish the specific responsibility of one or other of his contracting parties. He will then be responsible for everything beyond the limits of his contracting parties' responsibility.

(ii) The same applies as regards the consequences of inadequate co-ordination of the work, particularly the effect on the parties to the contract of a delay in the project as a whole, caused by other parties.

(iii) If the delay is due to the general organization of the work, the client will himself be obliged to accept liability vis-à-vis the other parties. If, however, the delay is attributable to one or more of them, the client can guard against some of its consequences by inserting penalty clauses in the various contracts.

(iv) Nevertheless, if a delay by one or more of the contracting parties has repercussions on the work of the others, the client will have the primary liability for any resulting damage to the participants which have performed their contractual obligations, particularly as regards time-limits, although he may be able to take action against the contracting party responsible for the delay to recover the sums he has been obliged to pay in compensation to the other parties which have not caused any delay.

(v) The client could for this purpose invoke the common law of liability but, in order to avoid any dispute, he would certainly be wise to insert a special clause to that effect in all his contracts. In adopting this course, he will, however, have to take account of the limitations either of the scope of liability or of the amount of compensation which are generally foreseen in the transactions connected with the

RIZICI KOJE SNOSI INVESTITOR

14. (i) Investitor će na taj način morati snositi finansijske posljedice nedostataka postrojenja, ako bi se kasnije pokazalo nemoguće utvrditi posebnu odgovornost koje od njegovih ugovornih stranaka. On će tada biti odgovoran i za sve za što nije odgovorna koja od njegovih ugovornih stranaka.

(ii) Isti princip primjenjuje se u pogledu posljedica neodgovarajuće koordinacije rada, a posebno s obzirom na posljedice koje to može imati na zakašnjenje pojedinih stranaka i cijelog projekta, a koje bi bilo prouzrokovano od strane drugih strana.

(iii) Ako je zakašnjenje posljedica opće organizacije rada, investitor će sam biti obvezan u odnosu prema drugim strankama da preuzme tu odgovornost. Ako se, međutim, zakašnjenje može pripisati kojoj od stranaka, investitor se može očuvati od nekih posljedica takvog zakašnjenja posebnim odredbama o ugovornoj kazni u različitim ugovorima.

(iv) Ipak, ako bi zakašnjenje koje od ugovornih strana imalo posljedice na rad drugih, investitor će imati prvenstvenu odgovornost za štete koje iz toga nastanu suradnicima koji su svoje ugovorne obveze uredno izvršili, a posebno u pogledu vremenskih ograničenja, iako bi on mogao biti u položaju da poduzme odredjene mјere protiv ugovorne strane koja je odgovorna za zakašnjenje da naknadi iznos koji je on obvezan platiti kao naknadu drugim strankama koje nisu prouzrokovale nikakvo zakašnjenje.

(v) Investitor se u tom cilju može osloniti na opće pravne odredbe o odgovornosti, ali bi, da izbjegne sporove, od njega bilo mudro da predviđi posebnu odredbu u tom smislu u svim svojim ugovorima. Pridržavajući se ovih načela, on će, međutim, ipak morati uzeti u obzir ograničenja ili opseg odgovornosti ili iznos naknade koji se

construction of large industrial works and which may, in the last analysis, result in the client's being liable for a large proportion of the damages to which the delays may give rise.

LESSENING OF THE RISKS INCURRED BY THE CLIENT

15. (i) The risks incurred by the client, in the case envisaged above, are thus very serious. The client might try to lessen them by inserting in his individual contracts, particularly in respect of the consequences of delay, liability clauses which go beyond those normally included in the supplies and services contracts. It will not always be easy, however, to obtain such an extension of the liability of the various parties to the contract.

(ii) Consequently, it will be in the interest of the client who adopts the "separate contracts" method, in addition to specifying in detail the obligations and responsibilities of his various contracting parties, to take the greatest possible care when planning and scheduling the work and arranging its material organization, co-ordination and supervision, so as to minimize the risks of delays, deficiencies and discrepancies in its execution.

(iii) If the client possesses or himself sets up an adequately staffed design office, he will give it responsibility for drawing up the project, and for organizing, co-ordinating and supervising the work. If he has no such office, he may engage the services of a consulting engineer, of an outside design office, or of another industrial undertaking specializing in the same branch of production.

općenito predviđaju u konkretnom poslu vezani s izgradnjom velikih industrijskih postrojenja, koja mogu u posljednjoj konzekvenци dovesti do toga da investitor bude odgovoran za najveći dio šteta do kojih mogu dovesti zakašnjenja.

UMANJIVANJE RIZIKA PREUZETIH OD INVESTITORA

15. (i) Rizici koje preuzima investitor u gore navedenom slučaju jesu, kao što smo vidjeli, veoma ozbiljni. Investitor može nastojati da ih umanji, naročito u pogledu posljedica zakašnjenja, na taj način da u pojedine ugovore uključuje takve odredbe o odgovornosti koje se razlikuju od onih koje obično sadrže ugovori o isporuci opreme i izvršenju usluga. Međutim, neće uvijek biti lako da se postignu takva utanačenja o proširenju odgovornosti raznih ugovornih stranaka.

(ii) Dosljedno tome bit će u interesu onog investitora koji se odluči da zaključuje "odvojene ugovore" da - pored detaljnog opisivanja obveza i odgovornosti svojih različitih ugovornih stranaka - obrati i najveću moguću pažnju planiranju i programiranju rada i uređenju svoje stvarne organizacije u koordinaciji i nadzoru, da bi umanjio rizike zakašnjenja, kao i nedostatke i neusklađenosti u svome izvršenju.

(iii) Ako investitor ima ili za tu svrhu osnuje projektni ured koji je kadrovski sposobljen, on će mu povjeriti odgovornost za izradu projekta, za modernizaciju, koordinaciju i nadzor nad radovima. Ako investitor nema takvoga ureda, on može angažirati inženjera konsultanta jednoga takvog vanjskoga projektnog ureda, ili jednoga drugog industrijskog poduzeća specijaliziranog u istoj grani proizvodnje.

INCORPORATION OF CONTRACTS WITH A CONSULTING
ENGINEER OR A DESIGN OFFICE

16. (i) Whatever formula is adopted for the organization and supervision of the work, it will not, in principle, alter the legal nature of the relationships between the client and the other contracting parties. If the client decides to employ a consulting engineer or a design office, these will play the role of an accredited representative of the client vis-à-vis the other parties. The situation will be the same if the client deals with an industrial undertaking. Complex problems of responsibility may, however, arise in the relations between the client and the consulting engineer, the design office or the industrial undertaking. If the client is negotiating with a consulting engineer, a design office or an industrial undertaking for all or part of the said services, the other parties concerned would certainly be well advised clearly to specify in their contract the consequences of any mistakes made by the consulting engineer, the design office or the industrial undertaking.

(ii) The FIDIC International General Rules for Agreement between Client and Consulting Engineer (IGRA 1963) and the conditions drawn up by the various national associations of consulting engineers or design offices generally provide that the consulting engineer or design office will be responsible only for the consequences of their proven mistakes and only up the amount of their fee, or an amount reasonably proportionate to it. Industrial undertakings supplying construction projects for setting up plants using the industrial process supplied by the client will probably seek to limit their responsibility in a similar way. The parties to contracts of this kind might be recommended to specify contractually in the fullest detail or by reference their respective obligations and responsibilities so as to minimize the possibility of disputes, should any difficulty arise in practice.

UKLAPANJE UGOVORA S INŽENJEROM KONZULTANTOM
ILI PROJEKTNIM UREDOM

16. (i) Bez obzira kakva se formula usvoji za organizaciju i nadzor nad radovima, to neće, u principu, izmijeniti pravnu prirodu odnosa izmedju investitora i drugih ugovornih strana. Ako investitor odluči zaposliti inženjera konzultanta ili projektni ured, oni će imati ulogu ovlaštenog predstavnika investitora u odnosu prema drugim ugovornim strankama. Isti će odnos postojati ukoliko investitor djeluje putem jednoga drugog industrijskog poduzeća. Veoma složeni problemi odgovornosti mogu se, međutim, pojaviti u odnosu izmedju investitora i inženjera konzultanta, projektnog ureda ili industrijskog poduzeća. Ako investitor pregovara s inženjerom konzultantom, projektnim uredom ili jednim industrijskim poduzećem za sve ili za neke od navedenih usluga, druge zainteresirane stranke sigurno bi parametno postupile kad bi jasno u svojim ugovorima predvidjele posljedice grešaka koje učine inženjer konzultant, projektni ured ili industrijsko poduzeće.

(ii) Medjunarodna opća pravila sporazuma izmedju investitora i inženjera konzultanta (IGRA 1963) sastavljena od FIDIC-a i uvjeti sastavljeni od raznih nacionalnih udruženja inženjera konzultanata ili projektnih ureda općenito predviđaju da će inženjer konzultant ili projektni ured biti odgovorni samo za posljedice svojih dokazanih grešaka i to samo do iznosa svojih honorara, ili do određenog iznosa u razumnoj proporciji prema tom honoraru. Industrijska poduzeća koja isporučuju projekte za izgradnju postrojenja, a koja upotrebljavaju industrijski postupak koji je dao sam investitor, vjerojatno će tražiti da ograniče svoje odgovornosti na sličan način. Onim strankama koje zaključuju ugovore ove vrsti može se preporučiti da u ugovoru pobliže odrede do najmanjih detalja svoje obveze i odgovornoštiti da bi umanjile mogućnost sporova, ako bi se poteškoće pojavile u praksi.

INCORPORATION OF CONTRACTS FOR THE SUPPLY OF INDUSTRIAL PROCESSES IN A SET OF SEPARATE CONTRACTS

17. (i) The situation will be still more complex where the industrial process was not developed by the client himself but is supplied to him by a third party. This particular relationship, too, will not affect the relationships between the client and the other parties. In his relationships with them, the client will be responsible for the industrial process.

(ii) The relationships between the client and the supplier of this process can, in principle, be based on the customary provisions for the cession or concession of manufacturing licences including or not, as the case may be, patents, know-how, or other components of an industrial process.

(iii) Since, however, in the case envisaged here, the industrial process-when it is a component of the work-is supplied for the construction of large industrial works involving very heavy capital investment by the client, the latter will not normally be satisfied with the standard degree of responsibility normally acceptable to the suppliers of manufacturing licences.

(iv) For their part, the suppliers of an industrial process are unlikely to be willing to broaden their responsibility without a corresponding increase of their remuneration; it would seem difficult, therefore, to envisage a transaction in which the supplier of the industrial process for the construction of an industrial plant will be content merely to supply it without also obtaining the contract for other related supplies and services for the project. He will, moreover, be reluctant to accept liability for the results of use of the process supplied, unless he plays some part in the construction of the industrial plant. Admittedly contracts for the ^{or concession} cession/of manufacturing licences sometimes do not relate to

UKLAPANJE UGOVORA ZA ISPORUKU INDUSTRIJSKOG POSTUPKA U NIZU ODVOJENIH UGOVORA

17. (i) Položaj će biti još složeniji kad industrijski postupak nije razvijen od samog investitora nego ga je on dobio od neke treće strane. Ovaj odnos također ne utječe na odnos izmedju investitora i ostalih stranaka. U svom odnosu s tim drugim strankama investitor će biti odgovoran za industrijski postupak.

(ii) Odnos izmedju investitora i dobavljača ovakvog industrijskog postupka može, u načelu, biti zasnovan na uobičajenim odredbama o cesiji ili koncesiji proizvodne licence uključujući ili ne, već prema okolnostima slučajeva, patente, know-how, ili druge sastavne dijelove industrijskog postupka.

(iii) Kada je, međutim, u gore opisanom slučaju industrijski postupak - kada je on dio radova - isporučen za izgradnju velikog industrijskog objekta koji za sobom pojavači velike kapitalne investicije od strane investitora, ovaj se u pravilu neće zadovoljiti s uobičajenim stepenom odgovornosti koji je normalno prihvatljiv isporučitelju proizvodnih licenci.

(iv) Što se tiče isporučitelja industrijskih postupaka veoma je malo vjerojatno da će biti voljni proširiti svoju odgovornost bez odgovarajućeg povećanja naknade koju primaju; zbog toga bi bilo teško zamisliti takav posao u kojem bi dobavljač industrijskog postupka za izgradnju industrijskog postrojenja bio zadovoljan time da taj postupak isporuči a da istovremeno ne ugovori isporuku drugih povezanih dijelova opreme i usluga za takav projekat. Taj dobavljač isto tako teško će se odlučiti da prihvati odgovornost za rezultate primjene svoga postupka ako on nema određene uloge u izgradnji industrijskog postrojenja. Priznajemo da ugovori o cesiji ili koncesiji proizvodnih licenci nekad ne

any other supplies or services but the licensor gives certain guarantees of performance on condition that all his instructions are followed to the letter. Since this condition leaves him a very wide loophole for denying responsibility, it reduces the value of the guarantees accordingly. The incorporation of licences in an agreement for other supplies or services is therefore a contractual method which may suit both parties equally. It may, however, take the agreement out of the separate contracts category, as that concept is interpreted in paragraph 4, into a new category characterized by the fact that a contract for the provision of several types of supplies or services is awarded to the same contracting party.

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18. Provision is made in the Introduction, under the heading "Comprehensive contracts", for the situation in which building and civil engineering work, on the one hand, and the supply and erection of industrial plants, on the other, are grouped together. In fact, new problems, which differ from those presented by "separate contracts" emerge as soon as there is any question of grouping certain supplies and services relating to industrial plants and such supplies and services do not include building or civil engineering work. This is the specific situation which should be considered first, before the problems of comprehensive contracts are taken up.

uključuju pravo na druge isporuke ili vršenje drugih usluga, ali davalac licence daje odredjene garancije za izvršenje pod uvjetom da su sve njegove upute najstrože poštivane. Obzirom da mu ovaj uvjet ostavlja veoma veliki prostor za poricanje odgovornosti, on na odgovarajući način smanjuje vrijednost dane garancije. Uključivanje licence u sporazum za druge isporuke ili usluge zbog toga predstavlja jednu ugovornu metodu koja može jednako odgovarati obim stranama. Taj način može, međutim, prekvalificirati takav ugovor i izuzeti ga iz kategorije odvojenih ugovora, kao što je on izložen u paragrafu 4. i svrstati ga u novu kategoriju kojoj je karakteristika u tomu da se ugovor za izvršenje nekoliko vrsta isporuka ili usluga da je i podjeljuje istoj ugovornoj strani.

x
x x

18. U uvodu ovom Vodiču, u poglavljju naslovljenom "Jedinstveni ugovori", opisuje se položaj u kojem se s jedne strane gradjevinski radovi a s druge strane isporuka i montaža opreme grupiraju zajedno. U biti, novi problemi, koji se razlikuju od onih izloženih u metodi "odvojeni ugovori" pojavljuju se čim se postavi pitanje grupiranja određenih isporuka i usluga koje se odnose na industrijsko postrojenje i čim takve isporuke i usluge ne uključuju gradjevinske radove. Ovdje se radi o jednoj specifičnoj situaciji koju treba ispitati prije nego što prijedjemo na probleme jedinstvenih ugovora.

III. GROUPING OF SUPPLIES AND SERVICES
NOT INCLUDING BUILDING OR CIVIL ENGINEERING WORK

GROUPING OF HOMOGENEOUS SUPPLIES AND SERVICES

19. (i) All those transactions-in which the client awards a contract for the provision, not of separate supplies or services, but for a group of supplies or services-may be described (see paragraph 7 (iii)) as the juxtaposition of one or more comprehensive contracts and one or more separate contracts.

(ii) However, although this description may be correct in the abstract, it fails to reflect all the differences in the relationship between the client and the other contracting party, according to the volume and the degree of homogeneity of the work given to each of them.

(iii) If the client obtains the industrial process from a third party and gives the contract for all the supplies to one undertaking, for the erection of the plant to another and for the civil engineering and building work to a third, there will be no fundamental change in the separate contract formula as regards the client's responsibility as defined in paragraph 14 (i), or his duty for the co-ordination and material organization of the work.

(iv) There would, however, be some difference, and sometimes a marked difference, between this case in which supplies and services of one kind are grouped and the contract for their provision is awarded to a single contracting party and the extreme form of the separate contracts formula in which the client divides the contract for the supply of various items of equipment among several parties. In the contracts involving the grouping of supplies and services by homogeneous lots, the general co-ordination and material organization of the work, a responsibility assumed by the client in both of these cases, would be facilitated if the programme of work and its execution required a lesser number of parties. A further step might

III SVRSTAVANJE ISPORUKA I USLUGA NE UKLJUČIVO
GRADJEVINSKE RADOVE

SVRSTAVANJE SRODNIH ISPORUKA I USLUGA

19. (i) Svi oni poslovi u kojima investitor zaključuje ugovor ne za izvršenje odvojenih isporuka i usluga nego za pojedine grupe isporuka i usluga - mogu se opisati (vidi paragraf 7 (iii)) kao ugovori koji su veoma slični i koji stoje uz bok jednoga ili više jedinstvenih ugovora, ili jednoga ili više odvojenih ugovora.

(ii) Medjutim, iako ovaj opis može biti ispravan u apstraktnom smislu, on ne uspijeva odraziti svu razlikost u odnosu izmedju investitora i druge ugovorne strane u odnosu prema opsegu i stepenu srodnosti poslova koji se daju svakom od njih.

(iii) Ako investitor dobije industrijski postupak od treće strane i dade ugovor za sve isporuke jednom poduzeću, a za montažu postrojenja drugom i za gradjevinske rade trećem, tada ne postoji bitna promjena u formuli odvojenog ugovora i to u pogledu investitorove odgovornosti kao što je ova definirana u paragrafu 14. (i) ili njegovoj dužnosti za koordinaciju i stvarnu organizaciju rada.

(iv) Medjutim, u odredjenim slučajevima postojat će neka razlika, a nekad i velika razlika, izmedju ovog slučaja u kojem su isporuke i usluge jedne vrsti svrstane zajedno i ugovor za njihovu dobavu i izvršenje je dodijeljen jednoj ugovornoj strani, i krajnjem obliku odvojenih ugovora kad investitor dijeli ugovor za isporuku različitih predmeta opreme izmedju nekoliko stranaka. U ugovorima koji obuhvaćaju grupiranje isporuka i usluga prema njihovoj srodnosti, opća koordinacija i stvarna organizacija rada, dakle odgovornost koju investitor preuzima u oba ova slučaja, bit će

even be taken in this direction without any real change in the nature of the transaction if, instead of separating the supply of the equipment and the erection of the entire plant, both were entrusted to one and the same party. It would undoubtedly be a considerable advantage to the client if the co-ordination and organization of the work could be simplified. It is not impossible, however, that such simplification might increase the cost of the operation in view of the fact, in particular, that the contracting party in charge of a group of supplies and services might be obliged to fix his prices by taking into consideration the increase of his risks and expenses.

(v) The respective advantages and drawbacks of these two ways of contracting for the supply of equipment should thus be carefully weighed in each individual case so that the client may select the solution which seems most appropriate, having regard to the various factors involved. In some cases, it may, perhaps, be preferable to divide the full range of equipment into lots of sufficient size to reduce the number of suppliers and thus reduce the difficulties of co-ordination, without losing sight of the effects of such a solution on its cost.

SEPARATE PLANTS OR SHOPS

20. (i) Another method answering the same purpose is to divide the industrial works, where this is technically feasible, into a number of separate plants or shops, for each of which a separate contract is concluded. The contracting party awarded the contract for the construction of a plant or shop, including possibly its design, would be entirely responsible for the portion of the project allocated to it, while the client would still have to co-ordinate the work of the suppliers responsible for the various plants or shops. In this case,

olakšana ako je program rada i njegovo izvršenje tako složeno da iziskuje manji broj ugovornih stranaka. Daljnji korak u ovom pravcu može se poduzeti i bez ikakvih stvarnih promjena u prirodi posla: umjesto da se odvajaju isporuke opreme i montaže cijelog postrojenja, da obje ove radnje budu povjerene jednoj te istoj ugovornoj strani. Za investitora bi nesumnjivo predstavljalo veliku prednost ako bi koordinacija i organizacija rada mogle biti pojednostavljene. Međutim nije nemoguće da takvo pojednostavljenje može povećati troškove i to naročito u svjetlu činjenice da ugovorna strana koja ima dužnost grupiranja isporuka i usluga može biti obvezna da odredi svoju cijenu uzimajući u obzir povećanje svojih rizika i troškova.

(v) Opisani nedostaci i prednosti ovih dvaju putova ugovaranja za isporuku opreme trebaju biti pažljivo razmotreni u svakom pojedinom slučaju tako da investitor može izabrati rješenje koje mu najviše odgovara imajući u vidu sve izložene faktore. U nekim slučajevima može, moguće, postojati prednost u tome da se podijeli cijeli niz opreme u pojedine manje grupe koje bi bile dovoljno velike da smanje broj dobavljača i da na taj način smanje poteškoće koordinacije, a da se pri tome ne izgube iz vida posljedice takvog rješenja na troškove.

ODVOJENA POSTROJENJA ILI RADIONICE

20. (i) Jedna druga metoda koja moguće odgovara i služi istom cilju je da se podijeli samo industrijsko postrojenje, gdje je to tehnički moguće, u određeni broj odvojenih postrojenja ili radionica, za koje se onda zaključuje odvojeni ugovor. Ugovorna strana kojoj je na taj način dodijeljena izgradnja postrojenja ili radionice, a moguće i njezino projektiranje, bila bi u cijelosti odgovorna za onaj dio projekta koji je njoj dodijeljen, a investitor bi i u

the contracting party awarded the contract for the design and construction of a plant or shop could be made responsible not only for the conformity of the equipment supplied and the quality of the erection, but also for the performance of the unit which it had to construct - in accordance with the contract-in so far as that performance was not affected by the design or functioning of the works. This responsibility for performance would give the client an additional safeguard for each unit considered separately.

(ii) The performance of the works as a whole would still be the responsibility of the client, since it would depend not only on the component units but also on the general design of the large industrial works and the relationship between its various parts, a matter which would not, under this hypothesis, be entrusted to the other parties responsible for construction of the individual units.

RESPONSIBILITY'S EXTENSION OF THE HOLDER
OF THE MAIN (BUT NOT SOLE) CONTRACT FOR
THE PERFORMANCE OF THE WORKS

21. (i) If the client wishes to transfer part of the responsibility for the works to one or more of the contracting parties, it is not sufficient for him merely to group homogeneous supplies and services; he must decide to award to one party the contract for supplies or services of different kinds.

(ii) This solution has already been mentioned above (paragraph 17) where it was envisaged that the supplier of the industrial process might also be awarded the contract for other supplies or services needed for the construction of the industrial plant. Consideration might be given, therefore-and this is often the case in practice-to the possibility of awarding to the supplier of the industrial process the contract for supply of some or all of the equipment.

ovakvoj dodjeli još imao dužnost koordinacije rada isporučitelja pojedinih postrojenja i radionice. U ovom slučaju ugovorna strana kojoj je dodijeljen ugovor za projektiranje i izgradnju postrojenja ili radionice mogla biti odgovorna ne samo za usklađenost isporučene opreme i za kvalitet montaže, već i za dobar rad jedinice koju je morala izgraditi - u skladu sa ugovorom - i to u onom opsegu u kojem taj rad ne stoji pod utjecajem projekta ili rada cijelog postrojenja. Ova odgovornost za rad dala bi investitoru jedno dodatno osiguranje za svaku jedinicu odvojeno.

(ii) Rad cijelog postrojenja kao cjelina još bi ostao u odgovornosti investitora, obzirom da rad te cjeline ne bi ovisio samo o radu pojedinih sastavnih jedinica nego i o općem projektu cijelog industrijskog postrojenja i odnosa izmedju njegovih dijelova, a koja odgovornost ne bi, u skladu s ovom hipotezom, bila podijeljena drugim strankama koje bi bile odgovorne za izgradnju individualnih jedinica.

PROŠIRENJE ODGOVORNOSTI GLAVNOG
(ALI NE I JEDINOG) UGOVARAČA
ZA RAD POSTROJENJA

21. (i) Ako investitor želi prenijeti dio odgovornosti za postrojenje na jednu ili više ugovornih strana, nije dovoljno da on samo svrsta istovrsne isporuke ili usluge; on se mora odlučiti da zaključi ugovor za isporuku različite opreme ili usluga s jednom ugovornom stranom.

(ii) Ovo rješenje već je bilo gore spomenuto (paragraf 17), gdje je bilo zamišljeno da isporučitelj industrijskog postupka može takodjer ugovoriti i ostale isporuke/potrebne za izgradnju industrijskog postrojenja. Zbog toga treba razmotriti mogućnost - a to se često čini u praksi - da se isporučitelju industrijskog postupka povjeri takodjer i isporuke dijela ili cijelokupne opreme. *

(iii) To this could also be added the drafting of the project and some technical assistance services. Being in charge of the over-all design of the works and for provision of a number of supplies and services required for its construction, the supplier, who thus becomes the holder of the main contract, will be able to find financial set-offs enabling him to guarantee not only the functioning but also the performance of the works. Nevertheless, if the client himself assumes responsibility for some of the supplies and services and the over-all control of the work, or awards them to other contracting parties, he will still share responsibility for the full success of the operation with the holder of the main contract.

(iv) Hence, if the equipment should prove defective, in particular if its parameters should fail to come up to expectations, the question would arise whether the holder of the main contract would be prima facie responsible for that situation and be required to show that the failure or non-attainment of parameters was due to the supplies and services for which the client has assumed responsibility or which he has contracted to other parties, or whether the client would have to prove that the failure or non-attainment of parameters was due to his holder of the main contract.

(v) In view of the vital importance of this problem, it will be in the interest of the parties to have clearly specified in the contract how they intended it to be settled. Admittedly, this will not be easy and will often call for long and troublesome negotiations. However difficult these may be, it is clearly better for the parties to face them than to risk encountering much more serious difficulties if they have to face the problem while the work is going on.

(iii) Ovome se također mogu dodati i usluge projektiranja kao i neke usluge tehničke pomoći. Obzirom da je u takvom slučaju isporučitelj opreme i projektant cijelokupnog postrojenja i dobavljač isporuka i usluga potrebnih za izgradnju, te da tada ima i ulogu glavnog ugovarača, on će biti u položaju da nadje odgovarajući financijski interes da može garantirati ne samo rad nego i učin postrojenja. Bez obzira na to, ako investitor sam preuzeme odgovornost za isporuku neke opreme ili usluga kao i opći nadzor nad radovima, ili ako ih povjeri nekoj drugoj ugovornoj stranci, on će ipak djeliti odgovornost za puni uspjeh pothvata s glavnim ugovaračem.

(iv) Dosljedno tome, ako se pokaže da oprema ima nedostataka, a naročito ako parametri opreme ne budu zadovoljavajući, postavit će se pitanje da li je glavni ugovarač "prima facie" odgovoran za takvu situaciju i da li će se od njega tražiti da dokaže da nepostizavanje parametara leži u nedostacima opreme za koju je odgovornost preuzeo sam investitor, ili koju je odgovornost prenio ugovorom na druge ugovorne strane, ili da li investitor treba dokazati da uzroci nepostizavanja parametara leže na strani njegovog glavnog ugovarača.

(v) U svjetlu vitalne važnosti ovoga problema, u interesu stranaka je da u ugovoru jasno odrede na koji način žele da se taj problem riješi. Slažemo se da to neće uvijek biti jednostavno i da će često iziskivati duge i teške pregovore. Međutim bez obzira na poteškoće za stranke je izrazito bolje da se s tim poteškoćama suoče nego da se nadju u mnogo većim poteškoćama u slučaju da to pitanje moraju rješavati u fazi izvodjenja radova.