

GUIDANCE FOR DAAB MEMBERS

Sexual Exploitation and Abuse and Sexual Harassment (SEA/SH) Prevention and Response Mechanism

1. INTRODUCTION

- 1.1. The World Bank (Bank) has been taking concerted measures to strengthen its approach to the prevention and mitigation of SEA/SH risks in Bank-financed projects.
- 1.2. The Bank's SEA/SH prevention and response measures include: robust requirements relating to the identification and mitigation of social risks (including the risks of SEA/SH), specific enhancements in operational processes and guidance to help prevent, mitigate and manage the risks, issuance of updated Standard Procurement Documents (SPDs) for Works that align with the Bank's environmental and social objectives and requirements (including specific requirements relating to management of SEA/SH). This cascades to contractors in the form of qualification requirements, technical specifications, contractual obligations and remedies, and other relevant provisions which eventually form integral parts of the Employer's bidding and contract documents.
- 1.3. Building on these measures and leveraging the use of the DAAB (already provided for in FIDIC General Conditions that form an integral part of Bank's SPDs for large Works), the Bank has implemented a new contract disqualification mechanism. The mechanism extends the role of the DAAB to include the review of contractor's compliance with its SEA/SH prevention and response obligations.
- 1.4. The mechanism for disqualifying non-compliant contractors (and any non-compliant subcontractor) with SEA/SH obligations (referred hereafter as "mechanism") is expected to enhance contractors' performance and accountability for compliance with SEA/SH obligations. The mechanism applies to large Works contracts, under projects assessed as having high SEA/SH risks.
- 1.5. This guidance describes the salient features of the mechanism relevant to DAAB members. The Guidance explains how the SEA/SH prevention and response mechanisms work, the act/s or omission/s that trigger a SEA/SH referral, and the procedural "due process" requirements. Once triggered, a referral could lead to a Contractor being disqualified from being awarded a Bank-financed contract for a period of two years.
- 1.6. For illustrative purposes, **clause references in this Guidance refer to the SPD Request for Bids Works without prequalification (SPD-SEA/SH)**, at the time of writing. Even if the substance of the mechanism as described in SPDs is required to be applied in individual contracts, the DAAB, as is always the case, shall base its work on the actual contract (as clause numbers, for example, may be different).

2. What does SEA/SH mean?

- 2.1. The applicable Bank's Standard Procurement Documents (SPDs) e.g. SPD-SEA/SH-Special Provisions, hereafter called "PC") define SEA and SH as follows:

"Sexual Exploitation and Abuse" "(SEA)" means the following:

Sexual Exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

Sexual Abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

"Sexual Harassment" "(SH)" is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor's Personnel with other Contractor's or Employer's Personnel.

- 2.2. The PC places SEA and SH within the Environmental and Social aspects of the project and contract.

"ES" means: Environmental and Social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)).

3. SEA/SH Prevention and Response obligations

- 3.1. The party which is best positioned to implement measures to prevent and respond is the Contractor. Therefore, the Special Provisions, which form part of the Particular Conditions of Contract, impose a series of obligations on the Contractor (SEA/SH Prevention and Response Obligations) which are designed to reduce the risk of SEA/SH and to improve the manner in which any alleged incidents are handled.
- 3.2. It is essential that the final contract clearly states the SEA/SH obligations that the Contractor has committed to delivering. These are collectively called in the PC the "SEA/SH Prevention and Response obligations" and include SEA/SH provisions in the following sub-clauses:
- 4.1 Contractor's General Obligations;
 - 4.20 Progress Reports;
 - 4.25 Code of Conduct;
 - 5.1 Subcontractors;
 - 6.9 Contractor's Personnel;
 - 6.27 Contractor's SEA/SH Response Mechanism; Receipt of SEA/SH allegations;

and Contractor's non-compliance; and
6.28 Training of Contractor's Personnel.

“SEA/SH Prevention and Response Obligations” means the Contractor’s obligations in regards to the prevention of and response to SEA/SH as set forth in Sub-Clauses 4.1, 4.20, 4.25, 5.1, 6.9, 6.27, and 6.28.

- 3.3. Should the Contractor be suspected of non-compliance with these contractual obligations, the matter is to be referred to the DAAB, which is to decide upon the alleged non-compliance in much the same way that it would decide in respect of any other dispute arising out of the Works which is referred to it by one of the parties to the Contract. The manner the SEA/SH referrals are made and the DAAB decides are regulated by the contract (e.g. for large works, see PCs 6.27, 21.9 and 21.10) . The DAAB is not to investigate any alleged incident but only possible non-compliance at the time of the alleged incident or otherwise.
- 3.4. If the DAAB confirms the non-compliance, the Bank may disqualify the Contractor (as well as any Subcontractor/s determined to be non-compliant) from being awarded a contract financed by the Bank for a period of two years. However, the Contractor has the right to challenge the DAAB decision through ICC Emergency Arbitration.
- 3.5. The Contractor's disqualification for future contracts is without prejudice to the parties' rights and obligations under the contract. Separate to the DAAB's determination, the Employer may also consider other contractual remedies, if it determines that the Contractor is in breach of contract, for example:
 - a. remove Contractor's personnel from site for breach of the code of conduct;
 - b. withhold interim payment for any environmental or social breach of contract;
 - c. call-in the ES Performance Security if applicable.

4. THE BIDDING PHASE

- 4.1. The Bank requires its Borrowers to apply the SPDs for international competitive procurement, available on its external website at www.worldbank.org/procurement/standarddocuments.
- 4.2. The Bank's SPDs for large works (including based on FIDIC Red Book (RB), Yellow Book (YB) and Silver Book (SB) 2017) include a number of relevant provisions including:
 - minimum requirements for the code of conduct (ES), which eventually become contractual;
 - requirement to provide environmental and social strategies and implementation plans (including SEA/SH prevention and response plans as appropriate);

- bidder declaration on past performance in managing ES aspects (for additional due diligence by the Employer);
- identified key personnel (including SEA/SH expert/s where the risk is substantial or high) to be proposed by the bidder;
- requiring constitution of the DAAB as one of the conditions for commencement of works;
- requiring provisional sums to include the Employer's share of the DAAB members to be expended in accordance with the DAAB agreement;
- strengthened DAAB's relevant experience and qualifications; proposed list of DAAB members subject to Bank's approval; and
- strengthened contractual provisions to manage environmental and social risks and impacts including: immediate and progress reporting requirements (with metrics for ES progress reports also covering relevant aspects SEA/SH prevention and response), health and safety requirements, social/labor clauses, and remedies (including on removal of personnel, withholding interim payments and calling-in the ES performance security as applicable)

4.3. Some of the relevant documents that the bidder must submit include the following:

Code of Conduct for Contractor's Personnel (ES)

The bidder is required to submit its Code of Conduct that will apply to Contractor's Personnel (as defined in the General Conditions of Contract (FIDIC RB 2017) and includes subcontractors), to ensure compliance of its personnel with key contractor's environmental and social (ES) obligations. The bidder uses the Code of Conduct form provided in the bidding documents for this purpose. No substantial modifications can be made to this form, except that the bidder may introduce additional requirements, including as necessary to take account of specific contract issues/risks. Once finalized, the Code of Conduct becomes one of the documents forming part of the Contract.

Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks

The bidder must submit ES Management Strategies and Implementation Plans (MSIPs) to manage key environmental and social risks e.g. Sexual Exploitation, and Abuse (SEA) prevention and response action plan. These strategies and plans must describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors. The ES Management Strategies and Implementation Plans also become part of the strategies and plans to be developed by the Contractor (C-ESMP).

Construction Schedule (Outline Works Programme)

The construction schedule submitted with the bid, as part of the bidder's technical proposal, is required to include the following key milestones:

- Engineer's no-objection to the Contractor's MSIPs, which collectively form the C-ESMP, in accordance with PC 4.1;
- Constitution of the DAAB;
- SEA/SH conference.

This construction schedule is not normally a contract document. (The Works are to be executed in accordance with the Programme submitted under GC 8.3 and reviewed by the Engineer).

Key Personnel Schedule

Where the SEA risks of a project are assessed to be substantial or high, the bidder's table of Key Personnel must include an expert with relevant experience in addressing sexual exploitation, sexual abuse and sexual harassment cases. Under GC 6.12 of FIDIC RB, YB and SB 2017, the Contractor is bound by this table.

5. EMPLOYER'S (and ENGINEER'S) OBLIGATIONS AFTER AWARD OF THE WORKS CONTRACT

- 5.1. The Employer through its Engineer shall ensure that the conditions required to commence the works are fulfilled by doing its part and actively monitoring the contractor's obligations.
- 5.2. As soon as possible after the constitution of the DAAB and before work starts on Site, the Employer is to organize a SEA/SH conference:

PC 2.7 SEA/SH Conference

"The Employer shall organize and run a SEA/SH orientation conference as soon as possible after the constitution of the DAAB and prior to the commencement of any physical work. The SEA/SH orientation conference shall be attended by the Contractor, its Subcontractors, the Engineer, the DAAB members and all other relevant persons. The objective of the SEA orientation conference shall be to ensure a common understanding of all SEA contractual requirements and remedies..."

- 5.3. The Engineer shall provide reviews/ consents/no-objections required by the contract in a timely manner, actively supervise the contract to ensure that the contractor is complying with its SEA/SH Prevention and Response Obligations and apply remedies in accordance with the contract.

6. CONTRACTOR'S OBLIGATIONS AFTER AWARD OF THE WORKS CONTRACT

6.1 Commencement of the Works

- 6.1.1. Before mobilizing to Site, the Contractor must obtain a Notice of No-objection from the Engineer to the measures the Contractor proposes for the management of the environmental and social risks based, as a minimum, on the MSIPs and Code of Conduct submitted with the Bid and forming part of the Contract.

PC 4.1 Contractor’s General Obligations

“The Contractor shall not carry out mobilization to Site ... unless the Engineer gives a Notice of No-objection ... to the measures the Contractor proposes to manage the environmental and social risks and impacts which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor’s Personnel submitted as part of the Bid and agreed as part of the Contract...”

- 6.1.2. Before Contractor’s Personnel are mobilized, the Contractor must put in place a mechanism for handling allegations of SEA and/or SH from the Contractor’s or Employer’s Personnel or any other person including third parties (“SEA/SH Response Mechanism”). Contractor’s Personnel are to be informed of the mechanism at the time of engagement. Details of the mechanism, in languages comprehensible to the Contractor’s Personnel, Employer’s Personnel, and the affected communities, are to be displayed in locations easily accessible to them.

PC 6.27 - Contractor’s SEA/SH Response Mechanism; Receipt of SEA/SH allegations; and Contractor’s non-compliance

6.27.1 “The Contractor’s SEA/SH Response Mechanism

The Contractor shall put in place an effective mechanism for receiving and promptly addressing allegations of SEA and/or SH from the Contractor’s or Employer’s Personnel or any other person including third parties (“SEA/SH Response Mechanism”)...”

- 6.1.3. The Contractor shall take all necessary measures to ensure that each Contractor’s Personnel is made aware of the Code of Conduct and understands the consequences of engaging in such prohibited behaviors. Copies in languages that can be understood by

PC 4.25 Code of Conduct

“The Contractor shall have a Code of Conduct for the Contractor’s Personnel. The Contractor shall take all necessary measures to ensure that each Contractor’s Personnel is made aware of the Code of Conduct including specific behaviors that are prohibited and understands the consequences of engaging in such prohibited behaviors. ...The Contractor’s Management Strategy and Implementation Plans shall include appropriate processes for the Contractor to verify compliance with these obligations.”

the workers and local community must be visibly displayed both on Site and in areas outside the Site.

6.2 During execution of the Works

- 6.2.1 As work proceeds, the Contractor must submit additional MSIPs addressing specific ES risks and impacts. These MSIPs shall be reviewed by the Engineer in accordance with the procedure for Contractor's Documents. Collectively, the MSIPs constitute the Contractor's Environmental and Social Management Plan (C-ESMP) which must be reviewed at least once every six months and updated as necessary. The updates are to be submitted for review by the Engineer.

PC 4.1- Contractor's General Obligations

"The Contractor shall submit, to the Engineer for Review any additional MSIPs as are necessary to manage the ES risks and impacts of ongoing Works... These MSIPs collectively comprise the Contractor's Environmental and Social Management Plan (C-ESMP). The Contractor shall review the C-ESMP, periodically (but not less than every six (6) months), and update it as required to ensure that it contains measures appropriate to the Works. The updated C-ESMP shall be submitted to the Engineer for Review...."

- 6.2.2 The Contractor shall require that its Subcontractors execute the works in accordance with the Contract, including complying with the relevant ES requirements and the SEA/SH Prevention and Response Obligations

PC 5.1 - Subcontractors

"The Contractor shall require that its Subcontractors execute the Works in accordance with the Contract, including complying with the relevant ES requirements and the SEA/SH Prevention and Response Obligations.

All subcontracts relating to the Works shall include a provision stipulating that the Subcontractor accepts that the Bank may disqualify the Subcontractor from being awarded a Bank financed contract for a period of two years if the Subcontractor is determined to have failed to comply with its SEA/SH Prevention and Response Obligations.

... "The Contractor's submission to the Engineer shall also include such a Subcontractor's declaration in accordance with the Particular Conditions...."

- 6.2.3 The Contractor is required to deliver, on an ongoing basis, induction and training to its relevant Personnel on environmental and social aspects of the contract. This includes sensitization on the prohibition of SEA and SH. A key part of the training is on the code of

conduct. The training is to ensure that the Personnel fully understand the code and how it applies in practice. Induction and training is to be delivered in a language/method that the recipients of the training can understand.

7. Treatment of SEA/SH incidents during execution of works

- 7.1 As mentioned in para. 6.1.2 above, the contract requires that the Contractor has in place an effective mechanism for receiving allegations of SEA/SH. Allegations can be from the Contractor's or Employer's Personnel or any other person, including third parties. The Contractor's procedures are to include processes that promptly address the allegation, including ethical and safe processes for investigating the incident, keeping a record of the investigation and outcome, and ensuring the confidentiality of the identity of the alleged survivor and the alleged perpetrator.

PC 6.28 - Training of Contractor's Personnel

"The Contractor shall provide appropriate training to relevant Contractor's Personnel on ES aspects of the Contract, including appropriate sensitization on prohibition of SEA and SH, and health and safety training referred to in Sub-Clause 4.8... The Contractor shall provide training on SEA and SH, including its prevention, to any of its personnel who has a role to supervise other Contractor's Personnel."

- 7.2 The following scenarios illustrate how these different matters are managed contractually.

SCENARIO A

Allegation of an SEA/SH incident against a person/s

- 7.3 This scenario explains the treatment of an allegation of an SEA/SH incident committed by Contractor's Personnel against a person/s.
- 7.4 Any allegation of SEA/SH received by the Contractor (including through its Subcontractors), the Employer or the Engineer shall be documented and promptly submitted to the other two parties. Any person (e.g. a community leader or non-government organization), who is made aware of an allegation can inform the Contractor, Engineer or Employer of the allegation. If a Bank staff is made aware of an allegation they inform the Employer.
- 7.5 The party receiving the allegation (Contractor, Engineer or Employer) documents the details including e.g. the type of alleged incident (sexual exploitation, sexual abuse or sexual harassment), the gender and age of the person who experienced SEA/SH etc. It is critical that in documenting the allegation that the identity of the alleged survivor and the alleged perpetrator are kept confidential.

PC 6.27.2 – Receipt of SEA/SH allegations

“Any allegation of SEA and/or SH received by the Contractor (including through its Subcontractor/s), the Employer or the Engineer shall be documented and promptly submitted to the other two parties. While maintaining confidentiality of the person who experienced the alleged incident, as appropriate, the documentation and submission should include the type of alleged incident (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident...”

- 7.6 On receiving an allegation, or being notified of an allegation, the Contractor immediately applies its SEA/SH Response Mechanism (PC 6.27.1). This includes applying ethical and safe processes for investigating and addressing the allegation.
- 7.7 On receiving an allegation, or being notified of an allegation, the Employer promptly sends a SEA/SH referral to the DAAB for review, copied to the Contractor and the Engineer.

SCENARIO B

The Employer or Engineer identifies non-compliance with SEA/SH contractual obligation/s

- 7.8 In this scenario, the Employer or the Engineer identifies the Contractor’s non-compliance with its SEA/SH Prevention and Response contractual obligations. For example, the code of conduct is not visibly displayed on site, a sub-contractor has failed to report a SEA incident to the Contractor or on receipt of an allegation of SH the Contractor failed to apply its SEA/SH Response Mechanism.
- 7.9 The Engineer immediately issues a Notice to Correct (NtC) to the Contractor under Sub-Clause 15.1, copied to the Employer and the DAAB. The NtC details the non-compliance, including the provision/s of the contract containing the Contractor’s obligation/s, and states how long the Contractor has to resolve the non-compliance.
- 7.10 The Contractor either responds to the Engineer’s NtC and describes the actions taken to successfully comply with it, at which point the Engineer may determine the NtC is resolved, or the Contractor is determined by the Engineer to be non-compliant with the NtC.
- 7.11 If the Contractor does not comply with the NtC, the Engineer immediately notifies the Employer and the Contractor of the Contractor’s failure to correct. On being notified of the non-compliance and failure to correct, the Employer promptly sends a SEA/SH referral to the DAAB for review, copied to the Contractor and the Engineer.

Special Provisions Sub-Clause 6.27 Contractor’s SEA/SH Response Mechanism; Receipt of SEA/SH allegations; and Contractor’s non-compliance

6.27.3 “Contractor’s non-compliance with SEA/SH contractual obligations

If the Engineer identifies that the Contractor, including its Subcontractor/s has not complied with the SEA/SH Prevention and Response Obligations under the Contract, the Engineer shall give a Notice to Correct to the Contractor in accordance with Sub-Clause 15.1, copied to the Employer and the DAAB. If the Contractor fails to comply with the Notice to Correct, the Engineer shall immediately notify the Employer and the Contractor. Upon receipt of such a notification, the Employer shall refer the non-compliance to the DAAB for its review and decision pursuant to Sub-Clause 21.9 [“SEA Referral”].”

SCENARIO C

DAAB identifies a potential non-compliance with SEA/SH contractual obligation/s

- 7.12 In this scenario, a DAAB report identifies potential non-compliance with the Contractor’s SEA/SH Prevention and Response obligations. For example, Contractor’s Personnel don’t seem to be aware of the existence of the code of conduct or are seen working on site without attending SEA/SH prevention training, or the code of conduct does not appear to be in the local language.
- 7.13 The Engineer reviews the potential non-compliance and determines whether a NtC is to be issued to the Contractor.
- a) If the Engineer determines not to issue a NtC, the Engineer informs the Employer, copying the DAAB, and provides the basis for this determination.
 - b) If the Engineer determines to issue a NtC, the Engineer gives a NtC to the Contractor, copying the Employer and the DAAB. The NtC details the non-compliance, the provision/s of the contract containing the Contractor’s obligation/s and stating how long the Contractor has to resolve the non-compliance.
- 7.14 The Contractor either responds to the Engineer’s NtC and describes the actions taken to successfully comply with it, at which point the Engineer may determine the NtC is resolved, or the Contractor is determined by the Engineer to be non-compliant with the NtC.
- 7.15 If the Contractor does not comply with the NtC, the Engineer immediately notifies the Employer and the Contractor of the Contractor’s failure to correct. On being notified of the non-compliance and failure to correct, the Employer sends a SEA/SH referral to the DAAB for review, copied to the Contractor and the Engineer.

6.27.3 Contractor's non-compliance with SEA/SH contractual obligations

“...If a DAAB report, prepared in accordance with Rule 3.10 of the DAAB Procedural Rules, identifies potential non-compliance of the Contractor, including its Subcontractor/s with the SEA/SH Prevention and Response Obligations, the Engineer shall review the potential non-compliance and determine whether a Notice to Correct shall be issued to the Contractor. If the Engineer determines that a Notice to Correct shall not be given to the Contractor, the Engineer shall inform the Employer copying the DAAB, providing the basis for its determination. If the Engineer, however, determines that a Notice to Correct shall be given to the Contractor, the Engineer shall give a Notice to Correct to the Contractor in accordance with Sub-Clause 15.1, copied to the Employer and the DAAB. If the Contractor fails to comply with the Notice to Correct, the Engineer shall immediately notify the Employer and the Contractor. Upon receipt of such a notification, the Employer shall refer the non-compliance to the DAAB for its review and decision pursuant to Sub-Clause 21.9 [“SEA/SH Referral”]”

8. THE DAAB ROLE

- 8.1 As stated above, the DAAB is to participate in the SEA/SH orientation conference, immediately after being appointed and before any work commences on Site. The objective of the SEA/SH orientation conference is to ensure a common understanding of all SEA contractual requirements and remedies, including those available under PC 21.9 [SEA/SH Referrals], PC 21.10 [Dissatisfaction with DAAB's decision of SEA/SH Referrals] and PC 21.11 [Bank's disqualification of the Contractor and its Subcontractor/s]. Although the conference is to be run by the Employer, the DAAB must promote the understanding of these provisions and of the DAAB's role, both in relation to SEA/SH and more widely.
- 8.2 After work has commenced on Site, the DAAB will make regular Site visits. The maximum period between these visits is less than in FIDIC 1999 and FIDIC 2017. It has been reduced from 140 days to 90 days.

Special Provisions: Procedural Rule 3.3

“In 3.3 (b), “140 days” is replaced with: “90 days” (maximum interval between Site visits).”

- 8.3 The DAAB is obliged to include within the agenda for each Site visit, a review of the status of the Contractor's SEA/SH obligations and the Engineer's actions in this respect.
- 8.4 The points to be reviewed include:
- MSIP (Initial submission & review, updated submission & review)
 - Code of Conduct (no. of workers vs. no. of signed copies of the code of conduct, both for Contractor & Subcontractors; visibly displayed copies on-Site and off-Site)
 - Training (Record of sessions held & no. of participants)
 - Response Mechanism (displayed visibly on-Site and off-Site; status of allegations)
 - Progress Reports
 - Notices to Correct.

Special Provisions: Procedural Rule 3.7

“The agenda shall include review of the (i) Contractor’s compliance with the SEA/SH Prevention and Response Obligations; and (ii) Engineer’s failure to discharge its duties under the Contract in this regard, including as specified in Sub-Clause 6.27 of the Contract Conditions.”

- 8.5 The DAAB must bear in mind that it is not to investigate allegations but only compliance with contractual obligations.
- 8.6 The review of the contractual procedures must be recorded in the DAAB Site visit report. Comments must be objective. They should also be neutral, to the extent possible, given that a potential non-compliance identified in a Site visit report might eventually lead to a referral upon which the DAAB must issue a decision.

Special Provisions: Procedural Rule 3.10

“The report shall identify any issue which raises SEA and/or SH concerns, including details of any potential noncompliance with the Contractor’s, including its Subcontractor/s, with the SEA/SH Prevention and Response Obligations.”
The DAAB shall also provide a report to the Employer on any potential failure of the Engineer to discharge its duties in regard to the Contractor’s SEA/SH Prevention and Response Obligations, including on identifying the Contractor’s failure to comply with the obligations, and the Notice to Correct and notification duties in accordance with Sub-Clause 6.27 of the Contract Conditions.”

- 8.7 If an SEA/SH allegation is received, or the Employer is notified by the Engineer of a non-compliance by the Contractor, the Employer is obliged to refer the matter to the DAAB for

its decision. The DAAB is given jurisdiction to decide upon such referrals by Sub-Clause 21.1 of the General Conditions and Sub-Clause 1.4 of the General Conditions of Dispute Avoidance/Adjudication Agreement, both as modified by the Special Provisions.

Special Provisions Sub-Clause 21.1 Constitution of the DAAB

“The DAAB shall also review and decide on any SEA Referral submitted to the DAAB pursuant to Sub-Clause 6.27.2 [Receipt of SEA allegations] and Sub-Clause 6.27.3 [Contractor’s non-compliance with SEA/SH contractual obligations], in accordance with Sub-Clause 21.9 [SEA Referrals].”

Special Provisions General Conditions of Dispute Avoidance/Adjudication Agreement: Sub-Clause 1.4 “DAAB Activities”.

“This also includes handling of SEA Referrals in accordance with Sub-Clause 21.9 of the Conditions of Contract.”

- 8.8 The procedure for dealing with such referrals is set out under PC 21.9.
- 8.9 Upon receipt of the referral, the DAAB is to request the Contractor in writing (copied to the Employer and the Engineer) to submit a statement demonstrating its compliance (including the compliance of any Subcontractor identified in the SEA/SH Referral), with the SEA/SH obligations, including details of actions taken in response to a SEA/SH allegation and/or Engineer’s Notice to Correct any non-compliance with the SEA/SH contractual obligations. The Contractor is to be allowed 28 days from receipt of this request to respond in writing to the DAAB copied to the Employer and the Engineer.
- 8.10 The DAAB must focus exclusively on the Contractor’s compliance or non-compliance with its SEA/SH obligations. The DAAB must under no circumstances assess the underlying allegation, including the factual aspects of the alleged SEA and/or SH incident. Any such assessment might place the DAAB in conflict with the judicial authorities and procedures. The DAAB decision shall not disclose the name of the alleged survivor nor of the alleged perpetrator.
- 8.11 The DAAB must render its decision in writing within 42 days of receiving the SEA/SH Referral. The decision must state that it is issued pursuant to PC 21.9 and must be issued to the Contractor and the Employer and copied to the Engineer.
- 8.12 The DAAB decision shall state whether the Contractor was compliant with its SEA/SH obligations at the time of the alleged incident.

PC 21.9 - SEA/SH Referrals

“SEA/SH Referrals pursuant to Sub-Clause 6.27 shall be submitted by the Employer to the DAAB in writing, copied to the Contractor and the Engineer. For a DAAB of three persons, the SEA Referrals shall be deemed to have been received by the DAAB on the date it is received by the chairperson of the DAAB.

Upon receipt of a SEA/SH Referral, the DAAB shall request the Contractor in writing (copied to the Employer and the Engineer) to submit a statement demonstrating its compliance with its SEA/SH Prevention and Response Obligations, including the actions it has taken in response to a SEA/SH allegation and/or any Engineer’s Notice to Correct for non-compliance with the SEA/SH contractual obligations. The Contractor shall within 28 days of receipt of this request, submit in writing such statement to the DAAB copied to the Employer and the Engineer.

In reviewing the Referral, the DAAB shall focus exclusively on the Contractor’s compliance with the SEA/SH Prevention and Response Obligations, including the actions the Contractor has taken in response to the SEA/SH allegation and/or any Engineer’s Notice to Correct for non-compliance with the SEA/SH obligations. The DAAB shall not assess the merits of an underlying allegation, including the factual aspects of the alleged SEA and/or SH incident.

The DAAB decision, which shall state that it is issued under this Sub-Clause 21.9, shall be provided in writing to the Parties with a copy to the Engineer within 42 days of receiving the SEA/SH Referral. The decision of the DAAB taken pursuant to this Sub-Clause 21.9 shall be binding on the Parties.

The DAAB decision arising from an allegation of SEA/SH incident shall state whether the Contractor was in compliance with its SEA/SH obligations at the time of occurrence of the alleged incident. The DAAB decision shall not disclose the name of the alleged survivor nor of the alleged perpetrator.”

9. PROCEDURES FOLLOWING A DAAB DECISION UNDER PC 21.9

- 9.1 A dissatisfied Party has the right to serve a Notice of Dissatisfaction (NOD) in accordance with GC 21.4.4 in relation to a decision issued under PC 21.9. The timely submission of an NOD will allow either Party to refer the matter for final resolution by arbitration under the ICC Arbitration Rules. In addition, either Party may invoke the Emergency Arbitrator Provisions.

PC 21.10 - Dissatisfaction with DAAB's decision on SEA Referrals

"If either Party is dissatisfied with the DAAB's decision issued under Sub-Clause 21.9 [SEA Referrals], such Party may give a NOD to the other Party in accordance with Sub-Clause 21.4.4 [Dissatisfaction with DAAB's decision]. Sub-Clause 21.5 [Amicable Settlement] shall not apply.

If the DAAB's decision has not become final and binding pursuant to Sub-Clause 21.4.4, the matter shall be finally settled by arbitration in accordance with Sub-Clause 21.6 [Arbitration].

Where arbitration is conducted pursuant to the ICC Arbitration Rules, the parties agree that:

- (i) The ICC Emergency Arbitrator Provisions shall apply irrespective of Article 29.6(c) of the ICC Arbitration Rules; and*
- (ii) The time limit set in Article 1.6 of Appendix V to the ICC Arbitration Rules shall be 10 days from the notification of the Emergency Arbitrator Order unless the President of the ICC International Court of Arbitration determines that a longer period is necessary."*

-
- 9.2 Following receipt by the Bank of a copy of a DAAB decision (provided by the Employer) which determines that the Contractor failed to correct identified non-compliance with its SEA/SH obligations or was non-compliant with such obligations at the time of an alleged incident, the Bank may disqualify the Contractor as well as any Subcontractor determined to be non-compliant, from being awarded a Bank-financed contract for a period of two years, unless an Emergency Arbitrator grants an order in favor of the Contractor.
 - 9.3 A Contractor/Subcontractor's disqualification expires two years after the date of disqualification unless an arbitration award is made in favor of the Contractor within the period.

Annex 1

SEA/SH DISQUALIFICATION - KEY ACTIONS RELEVANT TO DAAB MEMBERS

#	Stage	Key Action	✓
1.	Prior to commencement of Works	<ul style="list-style-type: none"> • DAAB is constituted (PC 8.1, GC/PC 21.1 and 21.2) • Familiarize with all relevant aspects of the SEA/SH disqualification mechanism • SEA/SH conference is carried out with active participation of the DAAB (PC 2.7) • Engineer's No-objection to the Contractor's proposed measures to manage the environmental and social risks and impacts (including for SEA/SH risks) in accordance with the contract (PC 4.1) 	
2.	Execution of Works	<ul style="list-style-type: none"> • Include in the agenda for meeting/site visit, review of : (i) Contractor's compliance with the SEA/SH Prevention and Response Obligations; and (ii) Engineer's failure, if any, to discharge its duties under the contract in this regard (DAAB procedural rule 3.7) • Include in the DAAB report: (i) any issue which raises SEA and/or SH concerns, including details of any potential noncompliance of the Contractor, including its Subcontractor/s, with the SEA/SH Prevention and Response Obligations; and (ii) any potential failure of the Engineer to discharge its duties in regard to the SEA/SH Prevention and Response Obligations (DAAB procedural rule 3.10) • Make well- reasoned decisions on SEA/SH referrals within contractual time line (PC 21.9) <p style="margin-left: 20px;">Aspects to be checked/reviewed may include:</p> <ul style="list-style-type: none"> • Contractor's environmental and social management strategies and implementation plans (including for SEA/SH risks) is periodically updated, with the Engineer's review, in accordance with the contract (PC 4.1) • Key personnel (including SEA/SH prevention and response expert/s) are resourced in accordance with Contract (Key personnel table, GC/PC 6.12) • Code of Conduct is disseminated and implemented in accordance with the Contract (Code of conduct form, PC 4.25) • Contractor has put in place an SEA/SH response mechanism which has been the subject of a Notice of No-objection from the Engineer. (PC 6.27.1) • Progress reports and immediate reports submitted to the Employer/Engineer in a timely manner and actioned as appropriate (PC 4.20, ES reporting metrics) 	

		<ul style="list-style-type: none">• Subcontracts awarded by the Contractor during contract execution comply with the Contract (PC 5.1)• Contractual remedies are applied in accordance with the Contract.	
--	--	---	--