



BIDDING DOCUMENTS

Issued on:

for

Procurement of Construction of

.....

IFB No:/NCB

Project: Nepal Health Sector Programme II

Employer:

Government of Nepal

Ministry of Urban Development

Department of Urban Development and Building Construction

Division office.....

Country: Nepal

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PART 1: BIDDING PROCEDURES

Section I - Instructions to Bidders

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Section I - Instructions to Bidders

A. General

1. **Scope of Bid**
 - 1.1 The Employer, as **indicated in the BDS**, issues this Bidding Document for the procurement of the Works as specified in Section 6 (Employer's Requirements). The name, identification, and number of contracts of this bidding are **provided in the BDS**.
 - 1.2 Throughout this Bidding Document:
 - (a) the term "in writing" means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) "day" means calendar day.
2. **Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called "Borrower") **indicated in the BDS** has applied for or received financing (hereinafter called "funds") from the World Bank (hereinafter called "the Bank") toward the cost of the project **named in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
 - 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
3. **Fraud and Corruption**
 - 3.1 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.¹ In pursuance of this policy, the Bank:
 - (a) defines, for the purposes of this provision, the terms set

¹ *In this context, any action taken by a bidder, supplier, contractor, or any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.*

forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party²;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation³;
- (iii) “collusive practice” is an arrangement between two or more parties⁴ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁵;
- (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under sub-clause 3.1 (e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in

² “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

³ “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁵ “Party” refers to a participant in the procurement process or contract execution.

question;

- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation; and
- (d) will sanction a firm or an individual, at any time, in accordance with prevailing Bank's sanctions procedures^a, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated^b sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract

3.2 In further pursuance of this policy, Bidders shall permit the Bank to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Bank.

3.3 Furthermore, bidders shall be aware of the provision stated in GCC Sub-Clauses 22.2 and 57.2 (h).

4. Eligible Bidders

- (a) A Bidder may be a natural person, private entity, or government-owned entity—subject to ITB 4.6—or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture (JV). Unless otherwise **stated in the BDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. Maximum number of JV shall be three. The qualification requirement of the parties to the JV shall be as specified in the BDS, and
- (b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during

^a A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: (i) temporary suspension in connection with an ongoing sanctions proceeding; (ii) cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and (iii) the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption.

^b A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which either has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder's pre-qualification application or the bid; or (ii) appointed by the Borrower.

Contract execution.

- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of any country or eligible countries mentioned in the BDS. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed sub-Contractors or suppliers for any part of the Contract including related services.
- 4.3 A Bidder shall not have a conflict of interest. A Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process, if:
- (a) they have controlling partners in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this bid; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same sub-Contractor in more than one bid; or
 - (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Contract that is the subject of the Bid; or
 - (g) a Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract.
- 4.4 A firm that is under a declaration of ineligibility by the Borrower/Bank in accordance with ITB 3, at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 Enterprises owned by Government shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent agency of the GoN.
- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.7 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified

Bidders.

- 4.8 Firms shall be excluded in any of the cases, if
- (a) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Employer's country prohibits any import of goods or Contracting of works or services from that country or any payments to persons or entities in that country.
 - (b) Bank: as a matter of law or official regulation, Nepal prohibits commercial relations with that country, provided that the bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required;
 - (c) a firm has been determined to be ineligible by the Bank in relation to their guidelines or appropriate provisions on preventing and combating fraud and corruption in projects financed by them.
- 4.9 The Domestic Bidder who has obtained Permanent Account Number (PAN) and Value Added Tax (VAT) Registration Certificate(s) and Tax Clearance Certificate from the Inland Revenue Office or proof of submission of audited PL report to the Inland Revenue Office shall only be eligible. The foreign bidder submitting the documents indicated in the BDS at the time of bid submission and a declaration to submit the document(s) indicated in the BDS at the time of contract agreement shall only be eligible.

5. Eligible Materials, Equipment and Services

- 5.1 The materials, equipment and services to be supplied under the Contract shall have their origin in any source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components

B. Contents of Bidding Document

6. Sections of Bidding Document

- 6.1 The Bidding Document consist of Parts I, II, and III, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

PART 1 Bidding Procedures

Section I - Instructions to Bidders (ITB)
 Section II - Bid Data Sheet (BDS)
 Section III - Evaluation and Qualification Criteria
 Section IV - Bidding Forms
 Section V - Eligible Countries

PART 2 Requirements

Section VI - Works Requirements
 Section VII – Preamble to the Bill of Quantities

PART 3 Conditions of Contract and Contract Forms

Section VIII - General Conditions (GC)
 Section IX - Special Conditions of Contract
 Section X - Contract Forms

- 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.
- 6.3 The Employer is not responsible for the completeness of the Bidding Document and their Addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.
- 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise any question or curiosity during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer shall be required to make available as soon as possible the answer to such question or curiosity in writing to any request for clarification, provided that such request is received as mentioned in BDS. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Bidder is encouraged to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a Contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for

death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer as mentioned in BDS.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2

C. Preparation of Bids

9. Cost of Bidding

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of

interpretation of the Bid, such translation shall govern.

- 11. Documents Comprising the Bid**
- 11.1 The Bid shall comprise the following:
- (a) Letter of Bid;
 - (b) completed Schedules, in accordance with ITB 12 and 14, or as stipulated in the BDS;
 - (c) Bid Security, in accordance with ITB 19;
 - (d) alternative bids, at Bidder's option and if permissible, in accordance with ITB 13;
 - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
 - (f) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the Contract;
 - (g) Technical Proposal in accordance with ITB 16;
 - (h) In the case of a bid submitted by a JV, the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Works to be executed by the respective partners; and
 - (i) Any other document **required in the BDS**.
- 12. Letter of Bid and Schedules**
- 12.1 The Letter of Bid, Schedules, and all documents listed under Clause 11, shall be prepared using the relevant forms in Section 4 (Bidding Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 13. Alternative Bids**
- 13.1 Unless otherwise **indicated in the BDS**, alternative bids shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.
- 13.3 When **specified in the BDS** pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.4 When **specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section VI (Employer's Requirements). The method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria).

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.

14.2 The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV (Bidding Forms). In case of Unit Rate Contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.

14.4 Unconditional discounts, if any and the methodology for their application shall be quoted in the Letter of Bid, in accordance with ITB 12.1.

14.5 If so indicated in ITB 1.1, bids are invited for individual Contracts or for any combination of Contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.3, provided the bids for all Contracts are submitted and opened at the same time.

14.6 Unless otherwise provided in the BDS and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Table of Adjustment Data in Section IV (Bidding Forms) and the Employer may require the Bidder to justify its proposed indices and weightings.

14.7 The bidder is subject to taxes such as VAT, social charges or income taxes on non-resident international personnel, and also duties, fees, levies on amounts payable by the employer under the Contract.

All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date mentioned in BDS prior to the deadline for submission of bids,

-
- shall be included in the rates and prices and the total bid price submitted by the Bidder.
- 15. Currency of Bid and Payment** 15.1 The currency of the bid and payment shall be in **Nepalese Rupees (NPR)**.
- 16. Documents Comprising the Technical Proposal** 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section *IV* (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.
- 17. Documents Establishing the Qualifications of the Bidder** 17.1 To establish its qualifications to perform the Contract in accordance with Section *III* (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section *IV* (Bidding Forms).
- 18. Period of Validity of Bids** 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended 30 days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.
- 19. Bid Security** 19.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, in original form, a bid security **as specified in the BDS**. In the case of a bid security, the amount shall be **as specified in the BDS**.
- 19.2 If a bid security is specified pursuant to ITB 19.1, the bid security shall be, at the Bidder's option, in any of the following forms:
- (a) original copy of an unconditional bank guarantee from "A" class commercial bank or;
 - (b) original copy of cash deposit voucher in the Employer's Account as specified in BDS.
- In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section *IV* (Bidding Forms) or in another substantially similar format approved by the employer prior to bid submission. The form must include the complete name of the Bidder. The bid security shall be valid for minimum thirty (30) days beyond the original validity period of the bid, or beyond any period of extension if

requested under ITB 18.2.

- 19.3 The bid security issued by any foreign Bank outside Nepal must be counter guaranteed by an "A" class commercial Bank in Nepal.
- 19.4 Any bid not accompanied by an enforceable and substantially compliant bid security, if required in accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive.
- 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned within three days, once the successful bidder has furnished the required performance security and signed the Contract Agreement pursuant to ITB 38.1.
- 19.6 The bid security may be forfeited:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 18.2 or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 39.1; or
 - (ii) furnish a performance security in accordance with ITB 38.1.
- 19.7 The Bid Security of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

20. Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid in the number specified in the BDS, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialled by the person signing the bid.
- 20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 Bidders may always submit their bids by mail or by hand or by courier. When so specified in the BDS, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

(a) Bidders submitting bids by mail, by hand or by courier shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 21.2 and 21.3.

(b) Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.

21.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer as provided in BDS 22.1;

(c) bear the specific identification of this bidding process indicated in BDS 1.1; and

(d) bear a warning not to open before the time and date for bid opening.

21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS.

22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, and

24.1 A Bidder may withdraw, or modify its bid after it has been

Modification of Bids

submitted by sending a written notice in a sealed envelope, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding modification of the bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL”, “MODIFICATION;” and
- (b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders after completion of the bid opening.

24.3 No bid may be withdrawn, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

25.1 The Employer shall open the bids in public at the address, date and time specified in the BDS in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS.

25.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out. and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder; the Bid Price(s), including any discounts and alternative bids and indicating whether there is a modification; the presence of a bid security and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Bid and Bill of Quantities are to be initialled by representative of the Bidder and Employer attending the bid opening. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1.

25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, or modification; the Bid Price, per Contract if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

- 26. Confidentiality**
- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids and recommendation of Contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31.
- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding

Document.

- 29. Determination of Responsiveness**
- 29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 29.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
- (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
- (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section VI (Employer's Requirements) have been met without any material deviation, reservation or omission.
- 29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30. Nonconformities, Errors, and Omissions**
- 30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformity in the bid.
- 30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.
- 30.3 Provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section III (Evaluation and Qualification Criteria).
- 30.4 If minor discrepancies are found such as in technical

specification, description, feature which does not make the bid to be rejected, then the cost, which is calculated to the extent possible due to such differences, shall be included while evaluating the bid.

30.5 If the value of such nonconformities is found more than fifteen percent the quoted amount of the bidder on account of small differences pursuant to ITB 30.4, such bid shall be considered ineffective in substance and shall not be involved in evaluation.

**31. Correction of
Arithmetical
Errors**

31.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

- (a) only for unit price Contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

**32. Evaluation of
Bids**

32.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

32.2 To evaluate a bid, the Employer shall consider the following:

- (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, and Value Added Tax for Unit Rate Contracts, or Schedule of Prices for lump sum Contracts, but including Day work items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.4;
- (d) adjustment for nonconformities in accordance with ITB 30.3;
- (e) application of all the evaluation factors indicated in Section *III* (Evaluation and Qualification Criteria);

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- 32.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 32.4 If this Bidding Document allows Bidders to quote separate prices for different Contracts, and to award multiple Contracts to a single Bidder, the methodology to determine the lowest evaluated price of the Contract combinations, including any discounts offered in the Letter of Bid, is specified in Section *III* (Evaluation and Qualification Criteria).
- 32.5 If the bid for an Unit Rate Contract, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analysis, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient as mentioned in BDS to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.
- 33. Comparison of Bids** 33.1 The Employer shall compare all substantially responsive bids in accordance with ITB 32.2 to determine the lowest evaluated bid.
- 34. Qualification of the Bidder** 34.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section *III* (Evaluation and Qualification Criteria).
- 34.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1.
- 34.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 35. Employer's Right to Accept Any Bid, and to Reject Any or All Bids** 35.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to Contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

- 36. Award Criteria** 36.1 The Employer shall award the Contract to the Bidder whose offer

has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

- 37. Letter of Intent to Award the Contract/ Notification of Award**
- 37.1 The Employer shall notify the concerned Bidder whose bid has been selected in accordance with ITB 36.1 within seven days of the selection of the bid, in writing that the Employer has intention to accept its bid and the information regarding the name, address and amount of selected bidder shall be given to all other bidders who submitted the bid.
- 37.2 If no bidder submits an application pursuant to ITB 40 within a period of seven days of the notice provided under ITB 37.1, the Employer shall, accept the bid selected in accordance with ITB 36.1 and Letter of Acceptance shall be communicated to the selected bidder prior to the expiration of period of Bid validity, to furnish the performance security and sign the contract within fifteen days.
- 37.3 At the same time, the Employer shall affix a public notice on the result of the award on its notice board and may make arrangements to post the notice into its website, if it has; and if it does not have, into the website of the Public Procurement Monitoring Office, identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the Contract awarded.
- 37.4 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 37.5 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 37.1, requests in writing the grounds on which its bid was not selected.
- 38. Performance Security**
- 38.1 Within Fifteen (15) days of the receipt of Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security from A class Commercial Bank in accordance with the conditions of Contract using Sample Form for the Performance Security included in Section 9 (Contract Forms), or another form acceptable to the Employer.
- 38.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

The process shall be repeated according to ITB 37.

39. Signing of Contract

39.1 The Employer and the successful Bidder shall sign the Contract Agreement within the period as stated ITB 38.1.

Within thirty (30) days from the date of issuance of notification pursuant to ITB 37.1 unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who, requests for debriefing within 30 days of publication of the contract award.

40. Complain and Review

40.1 If a Bidder is dissatisfied with the Procurement proceedings or the decision made by the Employer in the intention to award the Contract, it may file an application to the Chief of the Public Entity within Seven (7) days of providing the notice under ITB 37.1 by the Public Entity, for review of the proceedings stating the factual and legal grounds.

40.2 Late application filed after the deadline pursuant to ITB 40.1 shall not be processed.

40.3 The chief of Public Entity shall, within five (5) days after receiving the application, give its decision with reasons, in writing pursuant to ITB 40.1:

(a) whether to suspend the procurement proceeding and indicate the procedure to be adopted for further proceedings; or

(b) to reject the application.

The decision of the chief of Public Entity shall be final for the Bid amount up to the value as stated in BDS.

40.4 If the Bidder is not satisfied with the decision of the Public Entity in accordance with ITB 40.3, or the decision by the Employer is not given within five (5) days of receipt of application pursuant to ITB 40.1, it can, within seven (7) days of receipt of such decision, file an application to the Review Committee of the GoN, stating the reason of its disagreement on the decision of the chief of Public Entity and furnishing the relevant documents, provided that its Bid amount is more than Rupees Thirty Million (NPR. 30,000,000). The application may be sent by hand, by post, by courier, or by electronic media at the risk of the Bidder itself.

40.5 Late application filed after the deadline pursuant to ITB 40.4 shall not be processed.

40.6 Within three (3) days of the receipt of application from the Bidder, pursuant to ITB 40.4, the Review Committee shall notify the concerning Public Entity to furnish its procurement proceedings, pursuant to ITB 40.3.

40.7 Within three (3) days of receipt of the notification pursuant to ITB 40.6, the Public Entity shall furnish the copy of the related

documents to the Review Committee.

40.8 The Review Committee, after inquiring from the Bidder and the Public Entity, if needed, shall give its decision within one (1) month of the receipt of the application filed by the Bidder, pursuant to ITB 40.4.

40.9 The Bidder, filing application pursuant to ITB 40.4, shall have to furnish a cash amount or Bank guarantee from "A" class commercial bank equivalent to zero point five percent (0.5%) amount of its quoted Bid amount with the validity period of at least ninety (90) days from the date of the filing of application pursuant to ITB 40.4.

40.10 If the claim made by the Bidder pursuant to ITB 40.4 is justified, the Review Committee shall have to return the security deposit to the applicant, pursuant to ITB 40.9, within seven (7) days of such decision made.

41. Provision of PPA and PPR

If any provision of this document are inconsistent with World Bank's Guidelines: Procurement under IBRD Loans and Credits (January 2011), Public Procurement Act (PPA), 2063 or Public Procurement Regulations (PPR), 2064, the provision of this documents shall be void to the extent of such inconsistency and the provision of PPA and PPR shall prevail.

Section II - Bid Data Sheet

This section consists of provisions that are specific to each procurement and supplement or amend the provisions in the Instructions to Bidders (ITB).

A. Introduction

<p>ITB 1.1 ITB 1.1</p>	<p>The Employer is: Ministry of Urban Development, Department of Urban Development and Building Construction, Divisional Office, Nepal</p> <p>The name of the bid:</p> <p>The name of the bidding process is:</p> <p>The identification number of the bidding process is:</p> <p>The number and identification of lots comprising this bidding process is:</p>
<p>ITB 2.1</p>	<p>The Borrower is: Government of Nepal</p> <p>The name of the Project is: Nepal Health Sector Programme II</p>
<p>ITB 4.1 (a)</p>	<p>The individuals or firms in a JV shall be jointly and severally liable.</p>
<p>ITB 4.9</p>	<p>The foreign bidder is to submit</p> <ol style="list-style-type: none"> a. Firm registration certificates issued by respective government office of their country. b. Declaration of eligibility to bid in accordance with ITB 3 & 4 c. The Foreign bidder must mention whether any local agent for this tender is appointed or not. If so the detail name and address of the local tenderer must be provided

B. Bidding Document

<p>ITB 7.1</p>	<p>For <u>clarification purposes</u> only, the Employer's address is:</p> <p>Attention:</p> <p>Street Address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>Country:</p> <p>Telephone:</p> <p>Facsimile number:</p> <p>Electronic mail address:</p> <p>Requests for clarification should be received by the Employer no later than:</p>
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ITB 7.4	<p>A Pre-Bid meeting take place. If a Pre-Bid meeting will take place, it will be at the following date, time and place:</p> <p>Time:</p> <p>Place:</p> <p>A site visit conducted by the Employer..... organized.</p>
ITB 7.5	<p>Requests for clarification should be received by the Employer no later than: 10 days prior to the deadline for submission of bids.</p>

C. Preparation of Bids

ITB 10.1	<p>The language of the bid is: <u><i>English</i></u></p>
ITB 11.1 (b)	<p>In accordance with ITB 12 and ITB 14, the following schedules shall be submitted with the bid, including the priced Bill of Quantities for Unit Rate Contracts and Schedule of Prices for lump sum contracts:</p> <p style="text-align: center;"><i>Manpower Schedule, Equipment Schedule, Site Organization, Method Statement, Mobilization schedule, Construction schedule</i></p>
ITB 11.1 (i)	<p>The Bidder shall submit with its bid the following additional documents:</p> <p>For Local Bidders</p> <ol style="list-style-type: none"> a. Letter of Bid as of section 4 b. Up to date Firm/Company Registration Certificate c. Business Registration License d. VAT and PAN Registration Certificates e. Tax Clearance Certificate or Submissions of Tax Returns up to <i>[enter Fiscal year]</i> f. A written declaration made by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence. g. Joint Venture Authorization/ Agreement (if any) h. Power of Attorney <p>For Foreign Bidders</p> <ol style="list-style-type: none"> d. Firm registration certificates issued by respective government office of their country. e. Letter of Bid as of section 4 f. The bid security issued by any foreign Bank outside Nepal counter guaranteed by an "A" class commercial Bank in Nepal. g. Power of Attorney of Bid signatory h. Joint Venture Agreement (in case of JV) i. Bidder's Technical proposal as per Section 3 j. Bidder's qualification as per section 3 k. BOQ with rate amount and total amount l. Declaration of eligibility to bid as per Public Procurement Rules, 2064 Rule 40 (2) e

	<p>m. The Foreign bidder must mention whether any local agent for this tender is appointed or not. If any local agent is appointed, the foreign bidder should mention,</p> <ul style="list-style-type: none"> i. name and address of agent or representative in Nepal ii. rate of commission, type of currency and mode of payment to the agent or representative; iii. the terms and conditions with agent or representative, if any. iv. the local agent should submit the authorization letter to act for and on behalf of bidder; v. the local tenderers or their agents/representatives or agents of foreign bidders must be registered in concerned Tax Offices in Nepal and should submit the duly renewed copies of their Tax and Firm registration Certificates along with the tender. vi. the local tenderers or their agents/representatives or agents of foreign bidders must submit the copy of tax clearance certificate/ assessment of Fiscal Year from the Dept. of Internal Revenue along with the tender.
ITB 13.1	Alternative bids <i>shall not be</i> permitted.
ITB 13.2	Alternative times for completion <i>shall not be</i> permitted.
ITB 13.4	Alternative technical solutions shall not be permitted.
ITB 14.5	The prices quoted by the Bidder <i>shall not be</i> subject to price adjustment.
ITB 14.6	The prices quoted by the Bidder subject to adjustment during the performance of the Contract.
ITB 14.7	The date that determines all duties, taxes, and other levies payable by the Contractor under the contract or for any other cause, shall be 7 days prior to the deadline for submission of bids
ITB 18.1	The bid validity period shall be 90 days from the date of submission of Bid.
ITB 19.1	The Bidder shall furnish a bid security, from "A" class commercial bank with a minimum amount (inclusive of VAT) NPR, which shall be valid for 30 days beyond the validity period of the bid – i.e. till). However in case of bid security issued by any foreign Bank outside Nepal, it shall be counter guaranteed by an "A" class commercial Bank in Nepal.
ITB 19.2 (b)	Account Name: Bank Name: Bank Address.....Account Number:
ITB 20.1	In addition to the original of the bid, the number of copies is:

<p>ITB 20.2</p>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall indicate:</p> <p><i>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as a Power of Attorney; and</i></p> <p><i>(b) In the case of Bids submitted by an existing or intended JV, an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.</i></p>
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D. Submission and Opening of Bids

<p>ITB 21.1</p>	<p>Bidders <i>shall</i> have the option of submitting their bids electronically.</p>
<p>ITB 21.1 (b)</p>	<p>Bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be as described in DUDBC's E-procurement Web Portal for E-Submission of Bids which is provided in their website www.edudbc.gov.np</p>
<p>ITB 22.1</p>	<p>For <u>bid submission purposes</u> only, the Employer’s address is:</p> <p>Attention:</p> <p>Street Address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>ZIP Code:</p> <p>Country:</p> <p>The deadline for bid submission is:</p> <p>Date: 30 days from the date of notice Time:12:00 Noon</p>
<p>ITB 25.1</p>	<p>The bid opening shall take place at:</p> <p>Street Address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>Country:</p> <p>Date:</p> <p>Time:</p>
<p>ITB 25.1</p>	<p>If electronic bid submission is permitted in accordance with ITB 21.1, the specific bid opening procedures shall be:</p> <p>.....</p> <p>.....</p> <p>.....</p>

E. Evaluation and Comparison of Bids

ITB 32.5	The amount of the performance security be increased by Eight (8) percent of the quoted bid price.
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F. Award of Contract

ITB 40.3	The bid amount up to Rupees (less than one million US\$) (Rs.).
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Section III - Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders if the bidding was preceded by post-qualification exercise. GoN/DP requires bidders to be qualified by meeting predefined, precise minimum requirements. The method sets pass-fail criteria, which, if not met by the bidder, results in disqualification. In accordance with ITB 33 and ITB 35, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

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1. Evaluation

In addition to the criteria listed in ITB 32.2 (a) – (e) the following criteria shall apply:

1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity, to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 5 (**Works Requirements**).

1.2 Multiple Contracts

Pursuant to Sub-Clause 32.4 of the Instructions to Bidders, if Works are grouped in multiple contracts, evaluation will be as follows:

Works are grouped in multiple contracts and pursuant to Sub-Clause 32.4 of the Instructions to Bidders, the Employer will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least cost combination for the Employer by taking into account discounts offered by Bidders in case of award of multiple contracts.

If a bidder submits several successful (lowest evaluated substantially responsive) bids or has been awarded a contract whose duration overlaps with the duration of contracts being evaluated, the evaluation will also include an assessment of the Bidder's capacity to meet the aggregated requirements regarding:

- Experience
- Financial situation
- Current contract commitments,
- Cash flow capacity,
- Equipment to be allocated, and
- Personnel to be fielded.

1.3 Completion Time

An alternative Completion Time is not permitted under ITB 13.2

1.4 Quantifiable Nonconformities, Errors and Omissions

The evaluated amount of quantifiable nonconformities, errors and/or omissions shall be determined by ascertaining the price of such effect on an equal basis by adjusting the same to the quoted price of the bid. A bid having minor deviations and having no material deviation to cause any serious effect upon the scope, quality, characteristics, terms and

conditions, performance or any other requirements stated in the bidding documents and acceptable to the Employer can be considered to be substantially responsive.

2. Qualification

2.1 Eligibility

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

2.1.1 Conflict of Interest

No conflicts of interest in accordance with ITB Sub-Clause 4.3.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid
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2.1.2 Government-owned Entity

Applicant required to meet conditions of ITB Sub-Clause 4.5.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Forms ELI -1, ELI - 2 with attachments
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2.1.3 UN Eligibility

Not having been declared ineligible based on a United Nations resolution or Employer's country law, as described in ITB Sub-Clause 4.8.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid
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2.1.4 Other Eligibility

- Copy of Firm Registration Certificate
- Copy of Business Registration Certificate
- Copy of VAT and PAN Registration Certificate,
- Copy of Tax Clearance Certificate/Tax return submission evidence for the F/Y.....
- A written declaration made by the bidder with a statement that s/he is not ineligible to participate in the procurement proceedings; has no conflict of interest in the proposed procurement proceedings, and has not been punished for a profession or business related office

2.2 Pending Litigation

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

2.2.1 Pending Litigation

All pending litigation shall be treated as resolved against the Applicant and so shall in total not represent more than percent of the Applicant's net worth.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	Form LIT – 1
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2.3 Financial Situation

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

2.3.1 Historical Financial Performance

Submission of audited balance sheets and income statements, for the last years to demonstrate the current soundness of the applicants financial position. As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 1 with attachments
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2.3.2 Average Annual Construction Turnover

Minimum average annual construction turnover of NRS calculated as total certified payments received for construction contracts in progress or completed, within best three years out of last ten years..	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet at least 40% of the requirement	Form FIN - 2
--	-----------------------	-----------------------	----------------------------------	---	--------------

2.3.3 Financial Resources

<p>Using Forms FIN – 3 and FIN - 4 in Section 4 (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:</p> <ul style="list-style-type: none"> ▪ the following cash-flow requirement,(4)...., and ▪ the overall cash flow requirements for this contract and its current works commitment. 	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet at least 40% of the requirement	Form FIN – 3 and Form Fin – 4
--	-----------------------	-----------------------	----------------------------------	---	-------------------------------

2.4 Experience

Criteria Requirement	Compliance Requirements			Documents
	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

2.4.1 General Construction Experience

Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last years prior to the applications submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP - 1
---	-----------------------	----------------	-----------------------	----------------	--------------

2.4.2 Specific Construction Experience

(a) Contracts of Similar Size and Nature

Participation as Prime contractor, management contractor, or subcontractor, in at least ..contracts within the last ten (10) years, each with a value of at least NRSthat have been successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section 5, Works Requirements.	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 2(a)
--	-----------------------	-----------------------	----------------	----------------	-----------------

Only the net amount worked out after deducting the amount for VAT shall be computed and such amount shall be adjusted according to the updated price index of the Nepal Rastra Bank.

(b) Construction Experience in Key Activities

For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum	must meet all requirements	must meet all requirements	not applicable	not applicable	Form EXP- 2(b)
---	----------------------------	----------------------------	----------------	----------------	----------------

construction experience in the following key activities:					

2.5 Personnel

The Bidder must demonstrate that it has the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Experience [years]	Experience In Similar Works [years]
<u>1</u>			
2			
3			
4			
5			

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Information Forms included in Section 4 (Bidding Forms).

2.6 Equipment

The Bidder must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	Min. Number Required
<u>1</u>		
2		
<u>3</u>		
4		
<u>5</u>		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section 4 (Bidding Forms)

Section IV - Bidding Forms

This Section contains the forms which are to be completed by the Bidder and submitted as part of his Bid.

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Letter of Bid

The Bidder must accomplish the Letter of Bid in its letterhead clearly showing the Bidder's complete name and address.

Date:

Name of the contract:

Invitation for Bid No.:

To:

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) Clause 8;
- (b) We offer to execute in conformity with the Bidding Documents the following Works:
.....
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is:
.....
- (d) The discounts offered and the methodology for their application are:
- (e) Our bid shall be valid for a period of days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
- (g) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries or any countries **[insert the nationality of the Bidder, including that of all parties that comprise the Bidder if the Bidder is a consortium or association, and the nationality of each Subcontractor and Supplier];**
- (h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;

- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;
- (j) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible, under the Employer’s country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;
- (k) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;⁶
- (l) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (m) We declare that, we have no conflict of interest in the proposed procurement proceedings and we have not been punished for an offense relating to the concerned profession or business.
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
- (o) If awarded the contract, the person named below shall act as Contractor’s Representative:

—

- (p) We agree to permit **the Employer** or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by **the Employer**.

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

⁶ Use one of the two options as appropriate.

Table of Price Adjustment Data

Index Code	Index Description	Source of Index *	Base Value and Date	Employer's Proposed Weighting Range (coefficient)	Bidder's Proposed Weighting (coefficient) **
1	2	3	4	5	6
	Non-adjustable (A)			0.15 - 0.20	
	Labour (b)				
	Materials (c)				
	Equipment usage (d)				
			Total		1.00

Bid Security Bank Guarantee

*Bank's Name, and Address of Issuing Branch or Office
(On Letter head of the 'A' class Commercial Bank)*

Beneficiary: *name and address of Employer*

Date:

Bid Security No.:

We have been informed that (hereinafter called "the Bidder") has submitted to you its bid dated (hereinafter called "the Bid") for the execution of under Invitation for Bids No. ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of (*in figures*). (*amount in words*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will remain in force up to and including the date days after the deadline for submission of Bids as such deadline is stated in the instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this guarantee should reach the Bank not later than the above date.

This Bank guarantee shall not be withdrawn or released merely upon return of the original guarantee by the Bidder unless notified by you for the release of the guarantee.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

..... *Bank's seal and authorized signature(s)*

Note:

The bid security of has been counter guaranteed by the Bank on (Applicable for Bid Security of Foreign Banks).

Technical Proposal Format

Personnel

Equipment

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Others

Personnel

Form PER – 1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section 3 (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name
5.	Title of position*
	Name

***As listed in Section 3 (Evaluation and Qualification Criteria).**

Form PER – 2: Resume of Proposed Personnel

The Bidder shall provide all the information requested below. Fields with asterisk (*) shall be used for evaluation.

Position*		
Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of employer	
	Address of employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present employer

Summarize professional experience **over the last twenty years** in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From*	To*	Company, Project, Position and Relevant Technical and Management Experience*

Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section 3 (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder. The Bidder shall provide all the information requested below, to the extent possible. Fields with asterisk (*) shall be used for evaluation.

Type of Equipment*	
Equipment Information	Name of manufacturer
	Capacity*
Current Status	Model and power rating
	Year of manufacture
Current Status	Current location
	Details of current commitments
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured

The following information shall be provided only for equipment not owned by the Bidder.

Owner	Name of owner
	Address of owner
	Telephone
	Contact name and title
	Fax
	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Others

Bidder's Qualification

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

Form ELI – 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.</p>	

Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. <input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 20.2. <input type="checkbox"/> 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with _____ commercial law, in accordance with ITB 4.5. 	

Form LIT - 1: Pending Litigation

Each Bidder or member of a JV must fill in this form

Pending Litigation			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> No pending litigation in accordance with Criteria 2.2 of Section 3 (Evaluation and Qualification Criteria)			
<input type="checkbox"/> Pending litigation in accordance with Criteria 2.2 of Section 3 (Evaluation and Qualification Criteria)			
Year	Matter in Dispute	Value of Pending Claim in NRS	Value of Pending Claim as a Percentage of Net Worth

Form FIN - 1: Financial Situation

Each Applicant or member of a JV must fill in this form

Financial Data for Previous 3 Years [in NRS]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

- Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three or above years, as indicated above, complying with the following conditions.
- All such documents reflect the financial situation of the Applicant or partner to a JV, and not sister or parent companies.
 - Historic financial statements must be audited by a certified accountant.
 - Historic financial statements must be complete, including all notes to the financial statements.

Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Form FIN - 2: Average Annual Construction Turnover

Each Bidder or member of a JV must fill in this form

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed to **NRS** at the end of the period reported.

Annual Turnover Data for the Last 10 Years (Construction only)	
Year	Amount Currency

.-Average Annual Construction Turnover

Form EXP – 1: General Construction Experience

Each Bidder or member of a JV must fill in this form

General Construction Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Employer Brief Description of the Works Executed by the Bidder	Role of Bidder

Form EXP – 2(a): Specific Construction Experience

Fill up one (1) form per contract.

Contract of Similar Size and Nature			
Contract No of	Contract Identification		
Award Date		Completion Date	
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total Contract Amount	NRS		
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount	
Employer’s Name Address Telephone/Fax Number E-mail			
Description of the similarity in accordance with Criteria 2.4.2(a) of Section 3			

Form EXP - 2(b): Specific Construction Experience in Key Activities

Fill up one (1) form per contract

Contract with Similar Key Activities			
Contract No of	Contract Identification		
Award Date		Completion Date	
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total Contract Amount	NRS		
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount	
Employer's Name Address Telephone Number Fax Number E-mail			
Description of the key activities in accordance with Criteria 2.4.2(b) of Section 3			

Section V - Eligible Countries

Eligibility for the Provision of Goods, Works and Services in Bank-Financed Procurement

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): as a matter of law or official regulation, the Borrower's Country prohibits commercial relations with that Country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that Country or any payments to persons or entities in that Country.

2. For the information of borrowers and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

[Insert list of countries prohibited under official regulations of the country]

(b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

[Insert list of countries which are barred under UN Security Council Chapter VII]

PART 2: EMPLOYER'S REQUIREMENTS

Section VI – Employer’s Requirements

This Section contains the Specification, the Drawings, and supplementary information that describe the Works to be procured.

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Scope of Work

[Insert brief scope of works]

Specifications

Drawings

Supplementary Information

[Insert supplementary information if any]

Section VII – Preamble to the Bill of Quantities⁷

Notes on the Bill of Quantities for Unit Rate Contracts

General

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and special Conditions of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices bid in the priced Bill of Quantities shall, except as otherwise provided under the Contract, include all construction equipment, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.
5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.

⁷ In lump sum contracts, delete “Bill of Quantities” and replace with “Schedule of Activities” throughout this section.

7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with the Conditions of Contract.
8. The method of measurement of completed work for payment shall be in accordance with specification and other government procedures.

PART 3: CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VIII - General Conditions of Contract

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurements contracts and lump sum contracts.

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General Conditions of Contract

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.2 hereunder.
- (d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- (e) **Compensation Events** are those defined in GCC 42 hereunder.
- (f) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC 53.1.
- (g) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC 2.3 below.
- (h) The **Contractor** is the party whose Bid to carry out the Works has been accepted by the Employer.
- (i) The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
- (j) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (k) **Days** are calendar days; months are calendar months.
- (l) **Day works** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (m) A **Defect** is any part of the Works not completed in accordance with the Contract.

-
- (n) The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
 - (o) The **Defects Liability Period** is the period calculated from the Completion Date where the Contractor remains responsible for remedying defects.
 - (p) **Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
 - (q) The **Employer** is the party who employs the Contractor to carry out the Works, as specified in the **SCC**.
 - (r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
 - (s) **Force Majeure** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
 - (t) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
 - (u) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
 - (v) **Letter of Intent** is the letter of the Employer expressing his intention to award the contract.
 - (w) **Letter of Acceptance** means the formal acceptance by the Employer of the Bid and denotes the formation of the contract at the date of acceptance.
 - (x) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
 - (y) "**Party**" means the Employer or the Contractor, as the context requires.
 - (z) **SCC** means Special Conditions of Contract
 - (aa) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
 - (bb) The **Project Manager** is the person named in the **SCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in

replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

- (cc) **Retention Money** means the aggregate of all monies retained by the Employer pursuant to GCC 46.1.
- (dd) The **Site** is the area defined as such in the **SCC**.
- (ee) **Site Investigation Reports** are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (ff) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (gg) The **Start Date** is given in the **SCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (hh) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ii) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (jj) A **Variation** is an instruction given by the Project Manager which varies the Works.
- (kk) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **SCC**.

- 2. Interpretation**
- 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
 - 2.2 If sectional completion is specified in the **SCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
 - 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - (a) This Contract Agreement,

-
- (b) Letter of Acceptance,
 - (c) Contractor's Bid,
 - (d) Special Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Specifications,
 - (g) Drawings,
 - (h) Bill of Quantities (or Schedules of Prices for lump sum contracts), and
 - (i) Any other document listed in the **SCC** as forming part of the Contract.
- 3. Language and Law** 3.1 The language of the Contract and the law governing the Contract are stated in the **SCC**.
- 4. Project Manager's Decisions** 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation** 5.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 9. Personnel and Equipment** 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid to carry out the Works, or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person

who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

- 10. Employer's and Contractor's Risks**
- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the SCC for the following events which are

due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the proportions of Nepalese Rupees required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

14. Site Investigation Reports

14.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the SCC, supplemented by any information available to the Bidder.

15. Contractor to Construct the Works

15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

16. The Works to Be Completed within Completion Date

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them within the Completion Date specified in the SCC.

17. Approval by the Project Manager

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The project Managers approval shall not alter the Contractors responsibility for design of temporary works.

18. Safety

18.1 The Contractor shall be responsible for the safety of all activities on the Site.

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- 19. Discoveries** 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 20. Possession of the Site** 20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the **SCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 21. Access to the Site** 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 22. Instructions, Inspections and Audits** 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall permit the GoN/DP and/or persons appointed by the GoN/DP to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the GoN/DP if required by the GoN/DP. The Contractor's attention is drawn to Sub-Clause 58.1 which provides, inter alia, that acts intended to materially impede the exercise of the GoN's/DP's inspection and audit rights provided for under this Sub-Clause constitute a prohibited practice subject to contract termination.
- 23. Dispute Settlement** 23.1 The Employer and the Contractor shall attempt to settle amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 23.2 Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred to the Adjudicator or Dispute Resolution Committee (DRC) by either Party as specified in the **SCC** within 15 days after the expiration of amicable settlement period.
- 24. Appointment of the Adjudicator/ DRC Members** 24.1 The Adjudicator if specified in the **SCC** shall be appointed by the consensus of the Client and the Contractor. If the parties cannot reach an agreement on the appointment of the Adjudicator, the Client will request the Appointing Authority designated in the **SCC**, to appoint the Adjudicator within 15 days of receipt of such request.
- 24.2 DRC shall be formed which comprise of three members. Each

Party shall appoint one member each and the third member who shall act as the Chairman shall be appointed by the two members appointed by the Parties.

- 25 Procedures for Disputes**
- 25.1 If a dispute is referred to the Adjudicator or the DRC then the Adjudicator or the DRC shall give a decision in writing within 30 days of receipt of a reference of the dispute.
- 25.2 The Adjudicator or the DRC Members shall be paid by the hour at the rate specified in the **SCC**, together with reimbursable expenses of the types specified in the **SCC**, and the cost shall be divided equally between the Client and the Contractor, whatever decision is reached by the Adjudicator or DRC. Either party may refer a decision of the Adjudicator or DRC to an Arbitrator within 30 days of the Adjudicator's or DRC's written decision. If neither party refers the dispute to arbitration within the above 30 days, the Adjudicator's or the DRC's decision will be final and binding.
- 25.3 In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and at the place given in the **SCC**.

B. Time Control

- 26. Program**
- 26.1 Within the time stated in the **SCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 26.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the **SCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the **SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 15 days of being instructed to by the Project Manager.
- 26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and

Compensation Events.

- 27. Extension of the Intended Completion Date**
- 27.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 27.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information at least 7 days prior to the intended completion date. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 28. Acceleration**
- 28.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 28.2 If the Contractor's priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 29. Delays Ordered by the Project Manager**
- 29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 30. Management Meetings**
- 30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 31. Early Warning**
- 31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of

the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

- 31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 32. Identifying Defects** 32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 33. Tests** 33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 34. Correction of Defects** 34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the **SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 34.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 35. Uncorrected Defects** 35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

- 36. Contract Price** 36.1 In the case of a Unit Rate contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

36.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

37. Changes in the Contract Price

37.1 In the case of an Unit Rate contract:

- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 2 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

37.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

38. Variations

38.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

38.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

38.6 In the case of an Unit Rate contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC 37.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

39. Cash Flow Forecasts

39.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include as defined in the Contract in Nepalese Rupees.

40. Payment Certificates

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise:

(a) In the case of an Unit Rate contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

(b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

41. Payments

41.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If the Employer makes a late payment, the Contractor

shall be paid interest as indicated in the **SCC** on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing.

41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

41.3 Unless otherwise stated, all payments and deductions shall be paid or charged comprising the Contract Price.

41.4 Items of the Works for which no rate or price has been entered in BOQ shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

42. Compensation Events

42.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC 20.1.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.

- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

42.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

43.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

42.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

43. Tax

43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 45.

44. Currency

44.1 The currency of Contracts shall be Nepalese Rupees.

45. Price Adjustment

45.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due.

45.2 **Adjustment Formulate:** "The adjustment to the Interim Payment Certificates in respect of changes in cost and legislation shall be determined from separate formulae for each of the types of construction work to be performed and Plant to be supplied. The formulae will be of the following general type:

$$pn = A + b \frac{Ln}{Lo} + c \frac{Mn}{Mo} + d \frac{En}{Eo} + \text{etc.}$$

Where:

pn is a price adjustment factor to be applied to the amount for the payment of the work carried out in the subject month, determined in accordance with Sub-Clause 41;

A is a constant, specified in the Bidding Forms- Table of Price Adjustment data,, representing the nonadjustable portion in contractual payments;

b, c, d, etc., coefficients representing the estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the SCC;

Ln, Mn, En, etc., are the current cost indices or reference prices of the cost elements for month “n,” determined pursuant to Sub-Clause 45.4, applicable to each cost element; and

Lo, Mo, Eo, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 45.4.

45.3 Sources of Indices and Weightings: "The sources of indices shall be those listed in the Bidding Forms- Table of Price Adjustment data, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his bid the tabulation of Weightings and Source of Indices in the Bidding Forms, which shall be subject to approval by the Engineer."

45.4 Base, Current and Provisional Indices: "The base cost indices or prices shall be those prevailing on the day 30 days prior to the latest date for submission of bids. Current indices or prices shall be those prevailing on the day 30 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available."

45.5 Adjustment after Completion: "If the Contractor fails to complete the Works within the time for completion prescribed under Clause 1.1 (u), adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to the Employer, provided that if an extension of time is granted pursuant to Clause 27, the above provision shall apply only to adjustments made after the expiry of such extension of time."

45.6 **Weightings:** "The weightings for each of the factors of cost given in the Bidding Forms shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or instructed under Clause 38 or for any other reason."

45.7 **Subsequent Legislation:** "If, after the date 30 days prior to the latest date for submission of bids for the Contract, there occur changes to any National Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the Contractor, other than under the preceding sub-clauses of this clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 45.2."

45.8 Where, price adjustment provision is not applicable pursuant to Sub-clause 45.1 then the Contract is subject to price adjustment only for construction material in accordance with this clause. If the prices of the construction materials stated in the contract increase or decrease in an unexpected manner in excess of ten (10%) percent in comparison to the base price stated in the Bidding Form, then the price adjustment for the increase or decrease of price of the construction material beyond 10% shall be made by applying the following formulas:

For unexpected increase in price

$$P = [R1 - (R0 \times 1.10)] \times Q$$

For unexpected decrease in price

$$P = [R1 - (R0 \times 0.90)] \times Q$$

Where:

“P” is price adjustment amount

“R1” is the present price of the construction material (Source of indices shall be those listed in the Bidding forms)

“R0” is the base price of the construction material

“Q” is quantity of the construction material consumed in

construction during the period of price adjustment consideration

45.9 The Price Adjustment amount shall be limited to a maximum of 25% of the initial Contract Amount unless otherwise is specified in the SCC.

45.10 The Price Adjustment provision shall not be applicable if the contract is not completed in time due to the delay caused by the contractor or the contract is a Lump sum Contract or a Fixed Budget Contract.

46. Retention

46.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the SCC until Completion of the whole of the Works.

46.2 Upon the issue of a Defects Liability Certificate by the Project Manager, in accordance with GCC 55.1, half the total amount retained shall be repaid to the Contractor and half when the Contractor has submitted the Tax Clearance Certificate and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” bank guarantee.

47. Liquidated Damages

47.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

47.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 41.1.

48. Bonus

48.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the SCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

49. Advance Payment

49.1 The Employer shall make advance payment to the Contractor of the amounts stated in the SCC by the date stated in the SCC, against provision by the Contractor of an unconditional bank guarantee from 'A' class commercial Bank in a form and by a bank acceptable to the Employer in amounts equal to the advance

payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

49.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

49.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

50. Securities

50.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC, by a bank acceptable to the Employer, and denominated in Nepalese Rupees. The Performance Security shall be valid until a date 30 days from the date of issue of the Certificate of Completion in the case of a bank guarantee.

51. Day works

51.1 If applicable, the Day works rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

51.2 All work to be paid for as Day works shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

51.3 The Contractor shall be paid for Day works subject to obtaining signed Day works forms.

52. Cost of Repairs

52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

53. Completion

53.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager

shall do so upon deciding that the work is completed.

- 54. Taking Over** 54.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 55. Final Account** 55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 60 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 60 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 56. Operating and Maintenance Manuals** 56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.
- 56.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC 55.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.
- 57. Termination** 57.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
 - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
 - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
 - (e) the Project Manager gives Notice that failure to correct a

particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

- (f) the Contractor does not maintain a Security, which is required; and
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **SCC**.
- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 58.1.

57.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 57.2 above, the Project Manager shall decide whether the breach is fundamental or not.

57.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

57.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

58. Fraud and Corruption

58.1 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 day's notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.5 [Termination by Employer].

58.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

58.3 Without prejudice to any other rights of the Employer under this Contract, GoN may blacklist the Contractor for its conduct up to three (3) years on the following grounds and seriousness of the act committed by the Contractor:

- (a) if it is established that the Contractor has committed substantial defect in implementation of the Contract or has or has not substantially fulfilled its obligations under the Contract

For the purposes of this Sub-Clause:

-
- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice”⁸ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “coercive practice”⁹ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 22.2.

- 59. Black Listing** 59.1 Without prejudice to any other rights of the Employer under this Contract, GoN may **blacklist** a Bidder for its conduct one (1) to three (3) years on the following grounds and seriousness of the act committed by the bidder:
- (a) if it is established that the Contractor has committed substantial defect in implementation of the contract or has not substantially fulfilled its obligations under the contract or the completed work is not of the specified quality as per the contract.
- 60. Instructions, Inspections and Audits** 60.1 The Contractor shall permit the Borrower/Bank to inspect the Contractor’s accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Borrower/Bank, if so required by the Borrower/Bank.

⁸ “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁹ a “party” refers to a participant in the procurement process or contract execution.

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- 61. Payment upon Termination**
- 61.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 61.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 62. Property**
- 62.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
- 63. Release from Performance**
- 63.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

Section IX - Special Conditions of Contract

The following Special Conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Special Conditions of Contract

A. General	
GCC 1.1 (q)	The Employer is
GCC 1.1 (u)	The Intended Completion Date for the whole of the Works shall be.....
GCCs 1.1 (bb) 1.1(h) & 4.1	The Project Manager (The Employer's Representative is the Project Manager) is: The contractor is: In case of JV:
GCC 1.1 (dd)	The Site is located at and is defined in drawings No.
GCC 1.1 (gg)	The Start Date shall be
GCC 1.1 (kk)	The Works consist of
GCC 2.2	Sectional Completions are:
GCC 2.3(i)	<p>The following documents also form part of the Contract:</p> <p>For Local Bidders</p> <ul style="list-style-type: none"> - Value Added Tax (VAT) certificate - PAN certificate - Tax clearance certificate - firm registration certificate - business registration certificate <p>For Foreign Bidders</p> <ul style="list-style-type: none"> - Firm registration certificates issued by respective government office of their country. - If local agent is appointed by the foreign bidders the details as below <ol style="list-style-type: none"> i. name and address of agent or representative in Nepal ii. rate of commission, type of currency and mode of payment to the agent or representative; iii. the terms and conditions with agent or representative, if any. iv. authorization letter to act for and on behalf of bidder;

	<p>v. local agents of foreign bidder's in Nepal's</p> <ul style="list-style-type: none"> ▪ Value Added Tax (VAT) certificate ▪ PAN certificate ▪ Tax clearance certificate
GCC 3.1	<p>The language of the contract is <u>ENGLISH/NEPALI</u></p> <p>The law that applies to the Contract is the law of<i>NEPAL</i>.....</p>
GCC 8.1	Schedule of other contractors:
GCC 13.1	<p>The minimum insurance amounts shall be:</p> <p>(a) for the Works, Plant and Materials: is 100% percent of the value of work and material as per contract price.</p> <p>(b) For loss or damage to Equipment: minimum 100% of the equipment</p> <p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract 100% of the property</p> <p>(d) for personal injury or death:</p> <ul style="list-style-type: none"> i. of the Contractor's employees: As per prevailing labour act. ii. of other people including Employer's staffs and Engineer staff : NPR 500,000 <p>(NPR. Five Hundred Thousand only) per person for 10 persons with unlimited number of occurrences of other people</p> <p>The minimum deductibles shall be:</p> <p>AS per Contractor's all risk policy which is available in Nepal</p> <p>(a) for the Works, Plant and Materials:</p> <p>(b) For loss or damage to Equipment:</p> <p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract :</p> <p>(d) for personal injury or death:</p> <ul style="list-style-type: none"> i) of the Contractor's employees: ii) of other people:
GCC 14.1	Site Investigation Reports are:
GCC 16.1	The completion date shall be.....
GCC 17.1	<p>The following shall be designed by the Contractor:</p> <p>.....</p>
GCC 20.1	The Site Possession Date(s) shall be:
GCC 23.2	A dispute of the procurement contract having contract price valued up to one hundred million Rupees shall be resolved by the adjudicator and a dispute of the procurement contract having contract price more than that shall be resolved by a three-member dispute resolution committee.
GCC 24.1	Appointing Authority for the Adjudicator: Nepal Council of Arbitration (NEPCA).
GCC 24.2	<i>Name of the Adjudicator or DRC members:</i>

	<p>(a)</p> <p>(b)</p> <p>(c)</p>
GCC 25.2	The Adjudicator/DRC Members shall be paid by the hour at the rate of:
GCC 25.3	<p>Sub-Clause 25.3 – Any dispute between the Employer and Contractor arising in connection with the present Contract shall be referred to arbitration in accordance with the procedures of the Nepal Arbitration Act as currently in force.</p> <p>The place of arbitration shall be:, <i>Kathmandu</i></p>
B. Time Control	
GCC 26.1	The Contractor shall submit for approval a Program for the Works within days from the date of the Letter of Acceptance.
GCC 26.3	The period between Program updates is days. The amount to be withheld for late submission of an updated Program is ...
C. Quality Control	
GCC 34.1	The Defects Liability Period is: days.
D. Cost Control	
GCC 41.1	Interest rate is 10% per annum
GCC 45.2	<p>The Contractsubject to price adjustment in accordance with GCC Clause 45, and the following information regarding coefficients [<i>specify “does” or “does not”</i>] apply.</p> <p><i>[Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months]</i></p> <p>The coefficients for adjustment of prices are:</p> <p>(a) For currency [<i>insert name of currency</i>]:</p> <p style="padding-left: 40px;">(i) [<i>insert percentage</i>] percent nonadjustable element (coefficient A).</p> <p style="padding-left: 40px;">(ii) [<i>insert percentage</i>] percent adjustable element (coefficient B).</p> <p>(b) For currency [<i>insert name of currency</i>]:</p> <p style="padding-left: 40px;">(i) [<i>insert percentage</i>] percent nonadjustable element (coefficient A).</p> <p style="padding-left: 40px;">(ii) [<i>insert percentage</i>] percent adjustable element (coefficient B).</p> <p>The Index I for local currency shall be [<i>insert index</i>].</p> <p>The Index I for the specified international currency shall be [<i>insert index</i>].</p>

	<p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Employer]</i></p> <p>The Index I for currencies other than the local currency and the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Employer.]</i></p> <p>The coefficients and indices for adjustment of prices in Nepalese Rupees shall be as specified in the Table of Adjustment Data submitted together with the Letter of Bid</p>
GCC 45.9	<i>[insert the maximum amount if different from specified]</i>
GCC 46.1	The proportion of payments retained is: <u>5 (FIVE) PERCENT</u>
GCC 47.1	The liquidated damages for the whole of the Works are <u>0.05%</u> per day. The maximum amount of liquidated damages for the whole of the Works is <u>10 PERCENT</u> of the final Contract Price.
GCC 48.1	The Bonus for the whole of the Works is per day. The maximum amount of Bonus for the whole of the Works is <i>(should be same as the liquidated damages)</i>of the final Contract Price.
GCC 49.1	The Advance Payments shall be: and shall be paid to the Contractor no later than
GCC 49.3	Proportionate amounts to be repaid <i>[insert following the Schedule of completed percentage of works on a payment basis]</i> .
GCC 50.1	The Performance Security amount is
E. Finishing the Contract	
GCC 56.1	The date by which operating and maintenance manuals are required is The date by which “as built” drawings are required is
GCC 56.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is
GCC 57.2 (g)	The maximum number of days is:
GCC 61.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is

Section X - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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Letter of Intent
[on letterhead paper of the Employer]

..... *date.*

Notes on Letter of Intent

The issuance of Letter of Intent is the information of the selection of the bid of the successful bidder by the Employer and for providing information to other unsuccessful bidders who participated in the bid as regards to the outcome of the procurement process. This standard form of Letter of Intent to Award should be filled in and sent to the successful Bidder only after evaluation and selection of substantially responsible lowest evaluated bid.

To:..... *name and address of the Contractor*

Subject: *Issuance of letter of intent to award the contract*

This is to notify you that, it is our intention to award the contract *dated* for execution of the *name of the contract and identification number, as given in the Contract Data/SCC* to you as your bid price *amount in figures and words in Nepalese Rupees* as corrected and modified in accordance with the Instructions to Bidders is hereby selected as substantially responsive lowest evaluated bid.

Authorized Signature:

Name:

Title:

CC:
[Insert name and address of all other Bidders, who submitted the bid]

Letter of Acceptance

[on letterhead paper of the Employer]

..... *date*

To: *name and address of the Contractor*

Subject: *Notification of Award*

This is to notify that your Bid dated *date* for execution of the *name of the contract and identification number, as given in the Contract Data/SCC* for the Contract price of Nepalese Rupees [*insert amount in figures and words in Nepalese Rupees*], as corrected in accordance with the Instructions to Bidders is hereby accepted in accordance with the Instruction to Bidders.

You are hereby instructed to contact this office to sign the formal contract agreement within 15 days. As per the Conditions of Contract, you are also required to submit Performance Security, as specified in SCC, consisting of a Bank Guarantee in the format included in Section 9 (Contract Forms) of the Bidding Document.

The Employer shall forfeit the bid security, in case you fail to furnish the Performance Security and to sign the contract within specified period.

Authorized Signature:

Name and Title of Signatory:

Contract Agreement

THIS AGREEMENT made the day of,, between name of the Employer. (herein after “the Employer”), of the one part, and name of the Contractor.(hereinafter “the Contractor”), of the other part:

WHEREAS the *Employer* desires that the Works known as ***name of the Contract.*** should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

- 1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.***
- 2. The following documents shall be deemed to form and be read and construed as part of this Agreement.***
 - (a) the Letter of Acceptance;
 - (b) the Letter of Bid;
 - (c) the Addenda Number (***Insert addenda numbers if any***);
 - (d) the Special Conditions;
 - (e) the General Conditions;
 - (f) Bills of Quantities (BOQ);
 - (g) the Specification;
 - (h) the Drawings;
 - (i) the completed Schedules; and
 - (j) Bidding Forms -Table of Price Adjustment Data
 - (k) Any other document
- 3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.***
- 4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.***

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Nepal on the day, month and year indicated above.

Signed by

Signed by

for and on behalf of the Employer
in the presence of

for and on behalf the Contractor
in the presence of

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

Performance Security

(On letterhead paper of the 'A' class commercial Bank)

..... *Bank's Name, and Address of Issuing Branch or Office*

Beneficiary: *Name and Address of Employer*

Date:

Performance Guarantee No.:

We have been informed that *name of the Contractor*. (herein after called "the Contractor") has entered into Contract No. *reference number of the Contract*. dated with you, for the execution of *name of contract and brief description of Works*. (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we *name of the Bank*. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *name of the currency and amount in figures**. (. *amount in words*.) such sum being payable in Nepalese Rupees, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of , **, and any demand for payment under it must be received by us at this office on or before that date.

.....
Seal of Bank and Signature(s)

Note: All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

** The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract in Nepalese Rupees.*

*** Insert the date one hundred eighty days after the date specified for the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee".*

Advance Payment Security

(On letterhead paper of the 'A' class commercial Bank)

.....*Bank's Name, and Address of Issuing Branch or Office*.....

Beneficiary:*Name and Address of Employer*

Date:.....

Advance Payment Guarantee No.:

We have been informed that (herein after called "the Contractor") has entered into Contract No. *Reference number of the Contract*. dated with you, for the execution of (herein after called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum (.) is to be made against an advance payment guarantee.

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of (In words.) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number at

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the day of , **, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

.....
Seal of Bank and Signature(s)

** Insert the date Thirty days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee".