

NEPAL ELECTRICITY AUTHORITY

(An Undertaking of Government of Nepal)

TRANSMISSION DIRECTORATE



HETAUDA-DHALKEBAR-INARUWA 400KV SUBSTATION EXPANSION PROJECT

BIDDING DOCUMENT FOR

Procurement of Plant Design, Supply, Installation, Testing and
Commissioning of 400 kV Hetauda and Inaruwa Substations

Single-Stage, Two-Envelope
Bidding Procedure

Issued on:
Issued to:
Invitation for Bids No.:	HDI/ICB/GIS/HTD-INA
ICB No.:	HDI/ICB/GIS/HTD-INA
Employer:	Nepal Electricity Authority
Country:	Nepal

VOLUME I OF III
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Table of Contents - Summary Description

PART I BIDDING PROCEDURES

Section 1 - Instructions to Bidders (ITB) ----- 1-1

This Section specifies the procedures by Bidders in the preparation and submission of their Bids following a Single-Stage, Two-Envelope bidding procedure. Information is also provided on the submission, opening, and evaluation of bids and on the award of contract.

Section 2 - Bid Data Sheet (BDS) ----- 2-1

This Section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 - Instructions to Bidders.

Section 3 - Evaluation and Qualification Criteria (EQC) ----- 3-1

This Section contains the bid evaluation criteria to determine the lowest evaluated bid and specifies the necessary qualifications of Bidders.

Section 4 - Bidding Forms (BDF) ----- 4-1

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

Section 5 - Eligible Countries (ELC) ----- 5-1

This Section contains the list of eligible countries.

PART II REQUIREMENTS

Section 6 - Employer's Requirements (ERQ) ----- 6-1

This Section contains the Scope of Supply of Plant and Services, Specifications, the Drawings, and Supplementary Information that describe the plant and services to be procured, Personnel Requirements, Equipment Requirements, Certificates, and Change Orders.

PART III CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section 7 - General Conditions of Contract (GCC) ----- 7-1

This Section contains the general clauses to be applied in all contracts. These Conditions are subject to the variations and additions set out in Section 8 (Special Conditions of Contract).

Section 8 - Special Conditions of Contract (SCC) ----- 8-1

This Section contains provisions that are specific to each contract and that modify or supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

Section 9 - Contract Forms (COF) ----- 9-1

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.

Abbreviations

BD	Bidding Document
BDF.....	Bidding Forms
BDS.....	Bid Data Sheet
BOQ	Bill of Quantities
COF	Contract Forms
DP	Development Partners
ELI	Eligibility
EQC	Evaluation and Qualification Criteria
EXP	Experience
FIN	Financial
GCC	General Conditions of Contract
GoN	Government of Nepal
ICB	International Competitive Bidding
ICC.....	International Chamber of Commerce
ITB	Instructions to Bidders
JV	Joint Venture
LIT	Litigation
NCB	National Competitive Bidding
NEA.....	Nepal Electricity Authority
PAN	Permanent Account Number
PPA	Public Procurement Act
PPMO	Public Procurement Monitoring Office
PPR	Public Procurement Regulations
PL	Profit and Loss
SBD.....	Standard Bidding Document
SCC	Special Conditions of Contract
TS.....	Technical Specifications
VAT	Value Added Tax
ERQ	Employer's Requirements

Nepal Electricity Authority
Transmission Directorate
Hetauda-Dhalkebar-Inaruwa 400 KV Substation Expansion Project
Invitation for Bids (ICB)

First Date of publication: 16 May, 2018

Invitation for Bids for the Procurement of Plant Design, Supply, Installation, Testing and Commissioning of 400 kV Hetauda and Inaruwa Substations.

Contract Identification No: *HDI/ICB/GIS/HTD-INA*

1. Nepal Electricity Authority (NEA) has received a fund from Government of Nepal (GoN) towards the cost of *Hetauda-Dhalkebar-Inaruwa 400 KV Substation Expansion Project* and intends to apply part of the funds to cover eligible payments under the Contract for *Plant Design, Supply, Installation, Testing and Commissioning of 400 kV Hetauda and Inaruwa Substation, IFB No: HDI/ICB/GIS/HTD-INA*. Bidding is open to all eligible Nepalese and Foreign Bidders.
2. Nepal Electricity Authority (NEA) invites sealed bids from eligible bidders for the *Design, Supply, Installation, Testing and Commissioning of 400 kV Hetauda and Inaruwa Substation*, under International Competitive Bidding – Single-Stage, Two Envelope Bidding procedures.

Only eligible bidders with the following key qualifications should participate in this bidding:

- a) Minimum Average Annual Turnover of within the last three(3) years: **47 MUSD**
- b) Minimum Work experience of similar size and nature that must have executed within last ten(10) years:
 - i. At least 1 (one) contract of similar size and nature, each with a value of at least **37 MUSD**.
 - ii. Minimum two (2) GIS substations having at least cumulatively **15 (Fifteen)** circuit breaker bays of 400 kV or above and 40 kA short circuit level or higher.
 - iii. Minimum cumulative **1000 MVA** three Phase Power/Auto Transformers (or equivalent capacity in banks of 3 single-phase units) of 400 kV or higher-class voltage rating.

Detailed qualification criteria of the bidder, sub-vendors (manufacturers) and construction period are more elaborately described in the bidding documents. The contract duration is Eighteen (18) months from the date of contract effectiveness.

3. Interested Eligible Bidders may obtain further information and inspect the Bidding Documents at the address given below during office hours Sunday through Friday. Complete bidding documents are also posted on the NEA website www.nea.org.np for viewing/inspection only.
4. A complete set of bidding documents may be purchased within office hours from 16 May, 2018 up to preceding day of last date of bid submission as specified in clause 6 below or any extension thereof by interested Bidders on the submission of a written application to the address below and upon payment of a non-refundable fee of NRs. 20,000.00 (In words, Nepalese Rupees Twenty Thousand only) or USD 200.00 (In words, US Dollars Two Hundred only) deposited in the current Account No. 00100105000095 of *Transmission Directorate, Nepal Electricity Authority* at Everest Bank Limited, Baneshower, Kathmandu or in the form of draft drawn in favor of the “*Transmission Directorate, Nepal Electricity Authority*”. The document will be handed over to the bidder upon production of evidence of payment of the fee.

Bidders, who wish to receive the bidding document by post/courier, may send a request

- to the Employer with a payment of additional fee of USD 300.00 in a form of bank draft in favor of "Transmission Directorate, Nepal Electricity Authority". If so requested, NEA will send the document to the address requested by them. However, the Employer will not be responsible for delay or non-delivery of the documents so sent.
5. Pre-bid meeting shall be held at *Hetauda-Dhalkebar-Inaruwa 400 KV Substation Expansion Project* Office Kharipati, Bhaktapur, Nepal at 12:00 noon on 6 June, 2018 to clarify to the bidders the exact scope of the work, the basic data available and other issues in accordance with relevant clause of the bidding documents. Further the Bidders are strongly advised to visit the site to acquaint themselves with terrain conditions and associated details of the locations of the substations before the submission of Bids.
 6. Sealed bids must be submitted to the office address given below by hand/courier on or before 12:00 noon on 2 July, 2018. Bids received after this deadline will be rejected.
 7. The bids will be opened in the presence of Bidders representatives who choose to attend at 12:30 Hrs. on 2 July, 2018 at the office address given below. Bids must be valid for a period of 120 days from the date of bid opening and must be accompanied by a bid security in the form of Bank's Guarantee not less than **NRs. 127,400,000.00** or an equivalent amount in USD which shall be valid for 30 days beyond the bid validity period. The source of exchange rate shall be the exchange (selling) rates as published by the Nepal Rastra Bank (www.nrb.org.np) and the date for the exchange rate shall be the date 30 days prior to the date of bid opening. The bank guarantee shall be issued by a "A" Class commercial bank in Nepal. If the bank guarantee is issued by a foreign bank, it shall be counter guaranteed by a "A" Class commercial bank in Nepal.
 8. If the last date of purchasing and /or submission falls on a government holiday, then the next working day shall be considered as the last date. In such case the validity period of the bid security shall remain the same as specified for the original last date of bid submission.
 9. In the comparison of Bids, Domestic Preference Scheme will be applied in accordance with the provisions stipulated in the Bidding Document.
 10. The bidder shall bear all costs associated with the preparation and submission of its bid, and NEA will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.
 11. NEA reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring any liability to the affected bidder(s) or any obligation to inform the affected bidder(s) of the grounds for NEA's action.
 12. The office address of the Employer:
Nepal Electricity Authority
Transmission Directorate
Hetauda-Dhalkebar-Inaruwa 400 KV Substation Expansion Project
Kharipati, Bhaktapur, Nepal
Telephone: +977 1 6620018
Electronic mail address: hdi400kvss@nea.org.np

Section 1 - Instructions to Bidders

Table of Contents

A.	General.....	3
1.	Scope of Bid.....	3
2.	Source of Funds.....	3
3.	Fraud and Corruption	3
4.	Eligible Bidders	5
5.	Eligible Plant and Services.....	7
B.	Contents of Bidding Document.....	7
6.	Sections of Bidding Document	7
7.	Clarification of Bidding Document, Site Visit, Pre-Bid Meeting.....	8
8.	Amendment of Bidding Document.....	8
C.	Preparation of Bids	9
9.	Cost of Bidding.....	9
10.	Language of Bid	9
11.	Documents Comprising the Bid	9
12.	Letter of Bid and Schedules	10
13.	Alternative Bids	10
14.	Documents Establishing the Eligibility of Plant and Services	10
15.	Documents Establishing the Eligibility and Qualifications of the Bidder	11
16.	Documents Establishing Conformity of the Plant and Services.....	11
17.	Technical Proposal, Subcontractors	11
18.	Bid Prices and Discounts	12
19.	Currencies of Bid and Payment.....	14
20.	Period of Validity of Bids	14
21.	Bid Security/ Bid Securing Declaration	14
22.	Format and Signing of Bid.....	15
D.	Submission and Opening of Bids	16
23.	Submission, Sealing, and Marking of Bids.....	16
24.	Deadline for Submission of Bids.....	19

25.	Late Bids	19
26.	Withdrawal, Substitution, and Modification of Bids.....	19
27.	Bid Opening	20
E.	Evaluation and Comparison of Bids	22
28.	Confidentiality.....	22
29.	Clarification of Bids.....	22
30.	Deviations, Reservations, and Omissions.....	22
31.	Examination of Technical Bids.....	23
32.	Responsiveness of Technical Bid.....	23
33.	Nonmaterial Nonconformities	23
34.	Detailed Evaluation of Technical Bids.....	24
35.	Eligibility and Qualification of the Bidder	24
36.	Correction of Arithmetical Errors.....	25
37.	Conversion to Single Currency	25
38.	Margin of Preference.....	25
39.	Evaluation of Price Bids.....	26
40.	Comparison of Bids	27
41.	Employer's Right to Accept Any Bid, and to Reject Any or All Bids.....	27
F.	Award of Contract	27
42.	Award Criteria	27
43.	Letter of Intent to Award the Contract/ Notification of Award.....	27
44.	Performance Security	27
45.	Signing of Contract.....	28
46.	Complain and Review.....	28

Section 1 - Instructions to Bidders

A. General

1. **Scope of Bid**
 - 1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of plant and services as specified in Section 6 (Employer's Requirements). The name, identification, and number of lot/s (contract/s) of the international competitive bidding (ICB) are provided in the BDS.
 - 1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Section 7 (General Conditions of Contract) (GCC)).
2. **Source of Funds**
 - 2.1 GoN Funded: In accordance with its annual program and budget, approved by the GoN, the implementing agency indicated in the BDS plans to apply a portion of the allocated budget to eligible payments under the contract(s) for which this Bidding Document is issued. Or

Public Entities' own Resource Funded: In accordance with its annual program and budget, approved by the public entity, the implementing agency indicated in the BDS plans to apply a portion of the allocated budget to eligible payments under the contract(s) for which this Bidding Document is issued. Or

DP Funded: The GoN has applied for or received financing (hereinafter called "funds") from the Development Partner (hereinafter called "the DP") indicated in the BDS toward the cost of the project named in the BDS. The GoN intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued..
 - 2.2 **Applicable for DP Funded Project Only**

DP Funded: Payment by the DP will be made only at the request of the GoN and upon approval by the DP in accordance with the terms and conditions of the financing agreement between the GoN and the DP (hereinafter called the "Loan/Grant Agreement"), and will be subject in all respects to the terms and conditions of that Loan/Grant Agreement. No party other than the GoN shall derive any rights from the Loan Agreement or have any claim to the funds.
3. **Fraud and Corruption**
 - 3.1 The Government of Nepal (GoN) requires that the Procuring Entities as well as bidders, suppliers and contractors and their sub-contractors under GoN/DP-financed contracts, shall adhere to the highest standard of ethics during the procurement and execution of such contracts. In this context, the Employer;
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice" means 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) "coercive practice" means 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;

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

(iv) "obstructive practice" means:

(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 GoN/DP 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 GoN's/DP's inspection and audit rights provided for under sub-clause 3.5 below.

(b) will reject bid(s) if it determines that the bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

3.2 The Bidder shall not carry out or cause to carry out the following acts with an intention to influence the implementation of the procurement process or the procurement agreement :

(a) give or propose improper inducement directly or indirectly,

(b) distortion or misrepresentation of facts,

(c) engaging in corrupt or fraudulent practice or involving in such act,

(d) interference in participation of other competing bidders,

(e) coercion or threatening directly or indirectly to cause harm to the person or the property of any person to be involved in the procurement proceedings,

(f) collusive practice among bidders before or after submission of bids for distribution of works among bidders or fixing artificial/uncompetitive bid price with an intention to deprive the Employer the benefit of open competitive bid price,

(g) contacting the Employer with an intention to influence the Employer with regards to the bids or interference of any kind in examination and evaluation of the bids during the period from the time of opening of the bids until the notification of award of contract.

3.3 PPMO, on the recommendation of the Procuring Entity may blacklist a Bidder for a period of one (1) to three (3) years for its conduct including on the following grounds and seriousness of the act committed by the bidder:

(a) if convicted by a court of law in a criminal offence which disqualifies the Bidder from participating in the contract,

(b) if it is established that the contract agreement signed by the Bidder

was based on false or misrepresentation of Bidder's qualification information,

(c) if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing, a GoN/DP-financed contract.

(d) if the Successful Bidder fails to sign the Contract.

3.4 A bidder declared blacklisted and ineligible by the GoN, Public Procurement Monitoring Office (PPMO) and/or the DP in case of DP funded project, shall be ineligible to bid for a contract during the period of time determined by the GoN, PPMO and/or the DP.

3.5 The Contractor shall permit the GoN/DP 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 GoN/DP, if so required by the GoN/DP.

3.6 DP Funded: In pursuance of the fraud and corruption policy, the DP.

(a) will reject a proposal 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 question;

(b) will cancel the portion of the loan/ credit/ grant allocated to a contract if it determines at any time that representative(s) of the GoN or of a beneficiary of the fund engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the GoN having taken timely and appropriate action satisfactory to the DP to remedy the situation.

4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, or government-owned entity—subject to ITB 4.5—or any combination of them in the form of a Joint Venture (JV) under an existing agreement, or with the intent to constitute a legally-enforceable joint venture. In the case of a JV:

(a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. Maximum number of JV and other provision for JV shall be as per specified in the BDS. The qualification requirement of the parties to the JV shall be as specified in Section 3; Evaluation and qualification Criteria, 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 Contract execution.

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of Nepal or 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. All Bidders 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 any of, including but not limited to, the following apply:
- (a) they have controlling shareholders 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 material information about or improperly influence 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, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB 13. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3 (a) - (d) above, this does not limit the participation of a Bidder as a subcontractor in another Bid or of a firm as a subcontractor in more than one Bid; or
 - (f) a Bidder or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the plant and services that are the subject of the Bid; or
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the Contract.
- 4.4 A firm that is under a declaration of ineligibility by the GoN/DP in accordance with ITB 3, at the date of the deadline for bid submission or thereafter, shall be disqualified. The list of debarred firm is available at the electronic address specified in the BDS.
- 4.5 Enterprises owned by GoN 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 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, Nepal 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) DP Funded: as a matter of law or official regulation, Nepal prohibits Commercial relations with that country, provided that the DP is satisfied that such exclusion does not preclude effective competition for the supply of

goods or related services required;

(c) DP Funded: a firm has been determined to be ineligible by the DP in relation to their guidelines or appropriate provisions on preventing and combating fraud and corruption in projects financed by them.

- 4.8 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.
- 4.9 Domestic Bidder shall be eligible only if the bidder has obtained Permanent Account Number (PAN) and Value Added Tax (VAT) Registration Certificate(s) and Tax Clearance Certificate or proof of submission of income return as stated in BDS from the Inland Revenue Office. Foreign bidder shall be eligible only if the bidder submits 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.
- 5. Eligible Plant and Services**
- 5.1 The plant and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 and all expenditures under the Contract will be limited to such plant and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the plant, or component parts thereof are mined, grown, produced, or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is 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 consists 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 I Bidding Procedures**
- Section 1 - Instructions to Bidders (ITB)
 - Section 2 - Bid Data Sheet (BDS)
 - Section 3 - Evaluation and Qualification Criteria (EQC)
 - Section 4 - Bidding Forms (BDF)
 - Section 5 - Eligible Countries (ELC)
- PART II Requirements**
- Section 6 - Employer's Requirements (ERQ)
- PART III Conditions of Contract and Contract Forms**
- Section 7 - General Conditions of Contract (GCC)
 - Section 8 - Special Conditions of Contract (SCC)
 - Section 9 - Contract Forms (COF)
- 6.2 The IFB 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 its addenda, if they were not obtained directly from the source stated by the Employer in the IFB.

- 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 on the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS, or raise inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond to any request for clarification, provided that such request is received as mentioned in BDS. The Employer's response shall be in writing with copies 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 24.2.
- 7.2 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for the provision of plant and services. 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 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 24.2

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 English language. 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 into the English language, 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 two envelopes submitted simultaneously, one containing the Technical Bid and the other the Price Bid, both envelopes enclosed together in an outer single envelope.
- 11.2 The Technical Bid submitted by the Bidder shall comprise the following:
- (a) Letter of Technical Bid;
 - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21;
 - (c) alternative Bids, if permissible, in accordance with ITB 13;
 - (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22.2;
 - (e) documentary evidence in accordance with ITB 14.1, that the plant and services offered by the Bidder in its Bid or in any alternative Bid, if permitted, are eligible;
 - (f) documentary evidence in accordance with ITB 15, the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
 - (g) Technical Proposal in accordance with ITB 17.
 - (h) documentary evidence in accordance with ITB 16, that the plant and services offered by the Bidder conform to the Bidding Document;
 - (i) in the case of a bid submitted by a Joint Venture, the Bid shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the Bid, together with a copy of the proposed agreement;

- (j) list of subcontractors, in accordance with ITB 17.2; and
- (k) any other document required in the BDS.

11.3 The Price Bid submitted by the Bidder shall comprise the following:

- (a) Letter of Price Bid;
- (b) completed schedules as required, including Price Schedules, in accordance with ITB 12 and ITB 18;
- (c) alternative price Bids, if permissible, in accordance with ITB 13; and
- (d) any other document required in the BDS.

12. Letter of Bid and Schedules

12.1 The Letters of Technical Bid and Price Bid, and the Schedules, and all documents listed under ITB 11, shall be prepared using the relevant forms furnished in Section 4 (Bidding Forms). 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 and as required in the BDS.

13. Alternative Bids

13.1 The BDS indicates whether alternative Bids are allowed. If they are allowed, the BDS will also indicate whether they are permitted in accordance with ITB 13.3, or invited in accordance with ITB 13.2 and/or ITB 13.4.

13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the BDS, and the method of evaluating different time schedules will be described in Section 3 (Evaluation and Qualification Criteria).

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the Employer's requirements as described in the Bidding Document must also provide: (i) a price at which they are prepared to offer a plant meeting the Employer's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation 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 Bidders are invited in the BDS to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section 6 (Employer's Requirements). Technical alternatives for the specific parts of the facilities that comply with the performance and technical criteria specified for the plant and services shall be considered by the Employer on their own merits, pursuant to ITB 32.

14. Documents Establishing the Eligibility of Plant and Services

14.1 To establish the eligibility of the plant and services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section 4 (Bidding Forms).

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| 15. Documents Establishing the Eligibility and Qualifications of the Bidder | <p>15.1 To establish its eligibility and 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 in Section 4 (Bidding Forms).</p> <p>15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 38.</p> |
| 16. Documents Establishing Conformity of the Plant and Services | <p>16.1 The documentary evidence of the conformity of the plant and services to the Bidding Document may be in the form of literature, drawings and data, and shall furnish:</p> <ul style="list-style-type: none"> (a) a detailed description of the essential technical and performance characteristics of the plant and services, including the functional guarantees of the proposed plant and services, in response to the Specification; (b) a list giving full particulars, including available sources, of all spare parts and special tools necessary for the proper and continuing functioning of the plant for the period named in the BDS, following completion of plant and services in accordance with provisions of the contract; and (c) a commentary on the Employer's Specifications and adequate evidence demonstrating the substantial responsiveness of the plant and services to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its Bid, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specifications. |
| 17. Technical Proposal, Subcontractors | <p>17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.</p> <p>17.2 For major items of plant and services as listed by the Employer in Criterion 2.5 of Section 3 (Evaluation and Qualification Criteria), which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including Manufacturers, for each of those items. In addition, the Bidder shall include in its Bid information establishing compliance with the requirements specified by the Employer for these items. Bidders are free to list more than one Subcontractor against each item of the plant and services. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.</p> |

- 17.3 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 15.1

18. Bid Prices and Discounts

- 18.1 Unless otherwise specified in the BDS and/or Section 6 (Employer's Requirements), bidders shall quote for the entire plant and services on a "single responsibility" basis such that the total Bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the Bidding Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation, and completion of the plant. This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the plant and, where so required by the Bidding Document, the acquisition of all permits, approvals, and licenses, etc.; the operation, maintenance, and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

- 18.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the Bidding Document.

- 18.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section 4 (Bidding Forms). Where no different Price Schedules are included in the Bidding Document, Bidders shall present their prices in the following manner: Separate numbered Schedules included in Section 4 (Bidding Forms) shall be used for each of the following elements. The total amount from each Schedule (Nos. 1 to 4) shall be summarized in a Grand Summary (Schedule No. 5) giving the total bid price(s) to be entered in the Letter of Price Bid.

Schedule No. 1: Plant and Mandatory Spare Parts Supplied from Abroad

Schedule No. 2: Plant and Mandatory Spare Parts Supplied from Within the Employer's Country

Schedule No. 3: Design Services

Schedule No. 4: Installation and Other Services

Schedule No. 5: Grand Summary (Schedule Nos. 1 to 4)

Schedule No. 6: Recommended Spare Parts

Bidders shall note that the plant and mandatory spare parts included in Schedule Nos. 1 and 2 above exclude materials used for civil, building, and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation and Other Services.

- 18.4 In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:

(a) Plant to be Supplied from Abroad (Schedule No. 1):

(i) the price of the plant shall be quoted carriage and insurance paid

- (CIP)-named place of destination basis specified in the BDS;
- (ii) all customs duties and other taxes paid or payable in the Employer's country on the plant if the contract is awarded to the Bidder; and
 - (iii) the total price for the plant.
- (b) Plant Supplied from Within the Employer's Country (Schedule No. 2):
- (i) the price of the plant shall be quoted on an EXW Incoterm basis (ex works, ex factory, ex warehouse, ex showroom, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of plant quoted ex works or ex factory, or on the previously imported plant of foreign origin quoted ex warehouse, ex showroom;
 - (ii) sales tax and other taxes payable in the Employer's country on the plant if the contract is awarded to the Bidder, and
 - (iii) the total price for the plant.
- (c) Design Services. (Schedule No. 3). Rates or prices shall include all taxes, duties, levies, and charges payable in the Employer's country as of 30 days prior to the deadline for submission of Bids.
- (d) Installation and Other Services (Schedule No. 4) shall be quoted separately and shall include rates or prices for local transportation, insurance, and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables, and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the Bidding Document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies, and charges payable in the Employer's country as of 30 days prior to the deadline for submission of bids.
- (e) Recommended spare parts (Schedule No. 6) shall be quoted separately as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.
- 18.5 The current edition of Incoterms, published by the International Chamber of Commerce shall govern.
- 18.6 The prices shall be either fixed or adjustable as specified in the BDS.
- (a) In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as nonresponsive and rejected.
 - (b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport, and contractor's equipment in accordance with the procedures specified in the corresponding appendix to the Contract Agreement. A Bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indexes in the corresponding Form in

Section 4 (Bidding Forms).

- 18.7 If so indicated in BDS 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one contract shall specify in their Letter of Price Bid the price reductions applicable to each package, or alternatively, to individual contracts within the package, and the manner in which the price reductions will apply.
- 18.8 The bidder is subject to local taxes such as VAT, social charges or income taxes on nonresident 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 30 days 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.
- 19. Currencies of Bid and Payment**
- 19.1 The currency(ies) of the bid shall be, as specified in the BDS.
- 19.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements.
- 20. Period of Validity of Bids**
- 20.1 Bids shall remain valid for the period specified in the BDS from the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.
- 20.2 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 21, it shall also be extended 30 days beyond the deadline of the extended bid 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.
- 21. Bid Security/ Bid Securing Declaration**
- 21.1 The Bidder shall furnish as part of its bid, in original form, a bid security as specified in the BDS. In case of e-submission of bid, the Bidder shall upload scanned copy of Bid security letter at the time of electronic submission of the bid. The Bidder accepts that the scanned copy of the Bid security shall, for all purposes, be equal to the original. The details of original Bid Security and the scanned copy submitted with e-bid should be the same otherwise the bid shall be non-responsive.
- 21.2 The bid security shall be, at the Bidder's option, in any of the following forms:
- (a) an unconditional bank guarantee from "A" class commercial bank or;
 - (b) a 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 Form acceptable to the employer. 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 20.2.

21.3 The bid security issued by any foreign Bank outside Nepal must be counter guaranteed by a "A" class commercial Bank in Nepal.

21.4 Any bid not accompanied by an enforceable and substantially compliant bid security, if required in accordance with ITB 21.1, shall be rejected by the Employer as nonresponsive. In case of e- Submission, if the scanned copy of an acceptable Bid Security letter is not uploaded with the electronic Bid then Bid shall be rejected.

21.5 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 44.1 and ITB 45.1.

21.6 The bid security shall be forfeited if:

(a) a Bidder requests for withdrawal or modification of its bid, except as provided in ITB 20.2:

(i) during the period of bid validity specified by the Bidder on the Letter of Technical Bid and Price Bid, in case of electronic submission;

(ii) from the period twenty-four hours prior to bid submission deadline up to the period of bid validity specified by the Bidder on the Letter of Technical Bid and Price Bid, in case of hard copy submission.

(b) a Bidder changes the prices or substance of the bid while providing information pursuant to clause 29.1;

(c) a Bidder involves in fraud and corruption pursuant to clause 3.1;

(d) the successful Bidder fails to:

(i) furnish a performance security in accordance with ITB 44.1;

(ii) sign the Contract in accordance with ITB 45.1; or

(iii) accept the correction of arithmetical errors pursuant to clause 36 ;

21.7 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.

22. Format and Signing of Bid

22.1 The Bidder shall prepare one original set of the Technical Bid and one original set of the Price Bid comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL - TECHNICAL BID" and "ORIGINAL - PRICE BID". 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.

In case of e-submission of bid, the Bidder shall submit his bid electronically in PDF or web forms files as specified in ITB Clause 23.1(b), If a Bidder submits both the electronic bid and a bid in hard copy within the bid submission deadline, then the submitted Bids shall be

accepted for evaluation provided that the facts and figures in hard copy confirm to those in electronic bid. If there is any major discrepancy in fact and figures in the electronic bid and bid in hard copy, it shall be treated as two separate bids from one Bidder and both the Bids shall be disqualified, as per ITB Clause 4.3 (e).

22.2 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 initialed by the person signing the bid.

22.3 A Bid submitted by a Joint Venture shall be signed so as to be legally binding on all partners.

22.4 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

23. Submission, Sealing, and Marking of Bids

23.1 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

i. Bidders shall enclose the original of the Technical Bid, and the original of the Price Bid and each copy of the Technical Bid and Price Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as : “ORIGINAL TECHNICAL BID”, “ORIGINAL PRICE BID”, “ALTERNATIVE BID” and “COPY OF TECHNICAL BID” and “COPY OF PRICE BID”. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

ii. The inner and outer envelopes shall:

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

(bb) be addressed to the Employer as provided in BDS 23.1;

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

(dd) The outer envelope and the inner envelope containing Technical Bid shall bear a warning not to open before the time and date for the opening of Technical Bid in accordance with ITB 27.1.

iii. The inner envelope containing the Price Bid shall bear a warning not to open until advised by the Employer in accordance with ITB 27.7

iv. 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.

(b) **Electronic Bid Submission Procedures :** Bidders submitting Bids electronically shall follow the electronic bid submission procedure specified in this clause as follows:

- i. For e-submission, the bidder is required to register in the e-GP portal <https://www.bolpatra.gov.np>. for downloading and submitting the bid electronically.
- ii. Interested bidders may either purchase the bidding documents from the employer's office as specified in the invitation for bid (IFB) or bidders registered in the e-GP portal of PPMO may download the bidding document from <http://www.bolpatra.gov.np> after login. If bidders choose to download the bidding document and submit the bid electronically, then the cost of the bidding document shall be deposited as specified in IFB. In addition, electronic scanned copy (.pdf format) of the bank deposit voucher/cash receipt should also be submitted along with the electronic bid files.
- iii. The bidder shall then prepare/fill the documents and forms included in the issued bid documents or the downloaded bid documents from the e-GP portal of PPMO - <http://www.bolpatra.gov.np>. as applicable. The required documents and forms shall be prepared in PDF form and/or shall be filled in the web forms in the e-GP system as specified below:

Technical Bid:

S. N.	Document	Requirement	Remarks
1	Letter of Technical Bid	Mandatory	PDF/Web Forms
2	Bid Security (Bank Guarantee)	Mandatory	PDF
3	Company/Firm Registration Certificate	Mandatory	PDF
4	VAT registration	Mandatory	PDF
5	Tax clearances certificate or evidence of tax return submission	Mandatory	PDF
6	Power of Attorney of Bid signatory	Mandatory	PDF
7	Business Registration (Licence) Certificate	Mandatory, if Applicable	PDF
8	Bank Voucher for cost of bid document	Mandatory	PDF
9	Joint venture agreement	Mandatory	Mandatory in case of JV Bids Only

10	Qualification Information	Mandatory	Web Forms (Experience, Turnover, etc.)
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Price Bid;

S. N.	Document	Requirement	Remarks
1	Letter of Price Bid	Mandatory	PDF/Web Forms
2	Applicable Price Adjustment Table	If applicable	No Price adjustment will be treated if the indices in the Price Adjustment Table are not provided.
3	Completed BOQ or Price Schedule	Mandatory	Web Forms

Note:

- a) The documents specified as "Mandatory" should be included in e-submission and non submission of the documents shall be considered as non-responsive bid.
- b) Bidders (all partners in case of JV) should verify/update their profile documents as appropriate for the specific bid before submitting their bid electronically.
- iv) The Bidder shall then upload the PDF bid files and submit the complete bid online through e-GP portal of PPMO- <http://www.bolpatra.gov.np> within the specified date and time.
- v) Bidders are advised to download the bid submission report to ensure that all the documents/ files are up to date and complete.
- vi) The Bidder / Bid shall meet the following requirements and conditions for e-submission of bids;
 - aa) The e-submitted bids must be readable through open standards interfaces. Unreadable and or partially submitted bid files shall be considered incomplete and rejected for further bid evaluation.
 - bb) In addition to electronically submitted PDF files/web forms, the Bidder shall be required to submit original bid security letter/ documents and clarifications as specified in ITB Clause 29. If a bidder does not submit the original Bid security letter and requested documents and or clarifications within the specified time limit then the bid shall not be considered for further evaluation.
 - cc) If major discrepancy is found between the electronically submitted PDF bid files and the documents/ clarifications provided by the Bidder as per ITB Clause 29, then the bid shall not be considered for further evaluation.
 - dd) The facility for submission of bid electronically through e-submission is to promote transparency, non-discrimination, equality of access, and open competition in the bidding process. The Bidders are fully responsible to

use the e- submission facility properly in e-GP portal of PPMO- <http://www.bolpatra.gov.np> as per specified procedures and in no case the Employer shall be held liable for Bidder's inability to use this facility.

- ee) When a bidder submits electronic bid through the PPMO e-GP portal, it is assumed that the bidder has prepared the bid by studying and examining the complete set of the Bidding documents including specifications, drawings and conditions of contract.

24. Deadline for Submission of Bids

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

- 24.2 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.

25. Late Bids

- 25.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

26. Withdrawal, Substitution, and Modification of Bids

- 26.1 A Bidder may withdraw, or modify its bid after it has been submitted either in hard copy or by e-submission. Procedures for withdrawal or modification of submitted bids are as follows:

(i) Bids submitted in hard Copy

- a) Bidders may withdraw or modify its bids 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 22.2 before 24 hours prior to the deadline of submission of bids. The corresponding modification of the bid must accompany the respective written notice. All notices must be:
- (aa) prepared and submitted in accordance with ITB 22 and ITB 23, and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL", "MODIFICATION," and
 - (bb) received by the Employer twenty four hour prior to the deadline prescribed for submission of bids, in accordance with ITB 24.
 - (cc) The bidder shall clearly specify on envelope whether "MODIFICATION" is of Technical Bid or Price Bid.

ii) E-submitted bids.

- a) Bidder may submit modification or withdrawal prior to the deadline prescribed for submission of bid through e-GP system by using the forms and instructions provided by the system. Once a Bid is withdrawn, bidder will not be able to submit another bid response for the same bid.

- 26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders after completion of the bid opening.

- 26.3 Bidder may submit request for withdrawal or modification only one time.
- 26.4 No bid may be withdrawn if the bid has already been modified.
- 26.5 Request for withdrawal or modification must be made through the same medium of submission. Request for withdrawal or modifications through different medium shall not be considered.
- 26.6 The following provisions apply for withdrawal or modification of the Bids:
 - (i) In case of bids submitted in hard copy no bid shall be withdrawn or modified in the interval between 24 hours prior to 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.
 - (ii) In case of e-submitted bids no bids shall be withdrawn or modified in the interval between 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.

27. Bid Opening

- 27.1 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. Then the Employer shall segregates the Technical Bid and Price Bid separately. The Price Bids will remain unopened and will be held in custody of the Employer until the specified time of their opening. If the Technical Bid and Price Bid are submitted together in one inner envelope, the Employer may reject the entire Bid.

The Employer shall download the e-submitted Bid files. The e-procurement system allows the Employer to download the e-submitted bid files (report) only after bid opening date and time after login simultaneously by at least two members of the Bid opening committee.

After downloading the each e-bid, electronically submitted Technical Bid shall be opened at first in the same time and date as specified above. Electronic Bids shall be opened one by one and read out. The e-submitted technical bids must be readable through open standards interfaces. Unreadable and or partially submitted bid files shall be considered incomplete.

- 27.2 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.
- 27.3 Second, outer envelopes marked "SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened, read out, and recorded. Substitution Price Bid will remain unopened in accordance with ITB 27.1. No envelope shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.

- 27.4 Next, outer envelopes marked "MODIFICATION" shall be opened. No Technical Bid and/or Price Bid shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids, both Original as well as Modification, will remain unopened in accordance with ITB 27.1.
- 27.5 All other envelopes holding the Technical Bids shall be opened one at a time, and the following read out and recorded:
- (a) the name of the Bidder;
 - (b) whether there is a modification or substitution;
 - (c) the presence of a bid security or a Bid-Securing Declaration, if required; and
 - (d) any other details as the Employer may consider appropriate.
- Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Technical Bid are to be initialed by at least three representatives of the Employer attending the bid opening. No Bid shall be rejected at the opening of Technical Bids except for late Bids, in accordance with ITB 25.1.
- 27.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, or modification; alternative proposals; and the presence or absence of a bid security or a 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 who submitted Bids on time, and posted online when electronic bidding is permitted.
- 27.7 At the end of the evaluation of the Technical Bids, the Employer will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice of the opening of Price Bids.
- 27.8 The Employer will notify Bidders in writing who have been rejected on the grounds of their Technical Bids being substantially nonresponsive to the requirements of the Bidding Document and return their Price Bids unopened.
- 27.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders' representatives who choose to attend at the address, on the date, and time specified by the Employer. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance.
- 27.10 All envelopes containing Price Bids shall be opened one at a time and the following read out and recorded:

- (a) the name of the Bidder;
- (b) whether there is a modification;
- (c) the Bid Prices, including any discounts and alternative offers; and
- (d) any other details as the Employer may consider appropriate.

Only Price Bids, discounts, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Price Bid and Price Schedules are to be initialed by at least three representatives of the Employer attending bid the opening. No Bid shall be rejected at the opening of Price Bids.

- 27.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. 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 who submitted Bids on time, and posted online when electronic bidding is permitted.

E. Evaluation and Comparison of Bids

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| 28. Confidentiality | <p>28.1 Information relating to the evaluation 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 the Contract award is communicated to all Bidders.</p> <p>28.2 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.</p> <p>28.3 Notwithstanding ITB 28.2, 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 should do so in writing.</p> |
| 29. Clarification of Bids | <p>29.1 To assist in the examination, evaluation, and comparison of the Technical and Price 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 substance of the Technical Bid or prices in the Price 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 36.</p> <p>29.2 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.</p> |
| 30. Deviations, Reservations, and Omissions | <p>30.1 During the evaluation of Bids, the following definitions apply:</p> <ul style="list-style-type: none"> (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.

31. Examination of Technical Bids

- 31.1 The Employer shall examine the Technical Bid to confirm that all documents and technical documentation requested in ITB 11.2 have been provided, and to determine the completeness of each document submitted. If any of these documents or information is missing, the Bid may be rejected.
- 31.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer shall be rejected.
- (a) Letter of Technical Bid;
 - (b) written confirmation of authorization to commit the Bidder;
 - (c) Bid Security; and
 - (d) Technical Proposal in accordance with ITB 17.

32. Responsiveness of Technical Bid

- 32.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB11.
- 32.2 A substantially responsive Technical 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 plant and services 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.
- 32.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, Technical Proposal, in particular to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation, reservation, or omission.
- 32.4 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.

33. Nonmaterial Nonconformities

- 33.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation, or omission.
- 33.2 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 Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

- 33.3 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 shall 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 method indicated in Section 3 (Evaluation and Qualification Criteria).

**34. Detailed
Evaluation of
Technical Bids**

- 34.1 The Employer will carry out a detailed technical evaluation of the Bids not previously rejected as being substantially nonresponsive, to determine whether the technical aspects are in compliance with the Bidding Document. The Bid that does not meet minimum acceptable standards of completeness, consistency, and detail, and the specified minimum and/or maximum requirements for specified functional guarantees, will be treated as nonresponsive and hence rejected. To reach such a determination, the Employer will examine and compare the technical aspects of the bids on the basis of the information supplied by the Bidders, taking into account the following:

- (a) overall completeness and compliance with the Employer's Requirements; deviations from the Employer's Requirements; conformity of the plant and services offered with specified performance criteria; suitability of the plant and services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the Bid. The Bid that does not meet minimum and/or maximum acceptable standards of completeness, consistency, and detail will be rejected for non-responsiveness;
- (b) type, quantity, and long-term availability of mandatory and recommended spare parts and maintenance services; and
- (c) other relevant factors, if any, listed in Section 3 (Evaluation and Qualification Criteria).

- 34.2 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Employer will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

**35. Eligibility and
Qualification of
the Bidder**

- 35.1 The Employer shall determine to its satisfaction during the evaluation of Technical Bids whether a Bidder meets the eligibility and qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).
- 35.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.
- 35.3 An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. A negative determination shall result

into the disqualification of the Bid, in which event the Employer shall return the unopened Price Bid to the Bidder.

- 35.4 The capabilities of the manufacturers and subcontractors proposed in its Bid for the major items of plant and services to be used by the Bidders will also be evaluated for acceptability in accordance with Section 3 (Evaluation and Qualification Criteria). Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to propose, without changing its bid price, an acceptable substitute manufacturer or subcontractor meeting the minimum technical specifications stated in Section 6 (Employer's Requirements). If a Bidder does not provide an acceptable substitute manufacturer or subcontractor by the date and time set in the Employer's request for substitution of manufacturer or subcontractor, its Bid may be rejected.
- 35.5 Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.
- 36. Correction of Arithmetical Errors**
- 36.1 During the evaluation of Price Bids, the Employer shall correct arithmetical errors on the following basis:
- (a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the amounts given under the column for the price breakdown shall prevail and the Total Price will be corrected accordingly;
 - (b) where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary), the total of the amounts of Schedule Nos. 1 to 4 shall prevail and the Schedule No. 5 (Grand Summary) will be corrected accordingly;
 - (c) if there is a discrepancy between the grand total price given in Schedule No. 5 (Grand Summary) and the bid amount in item (c) of the Letter of Price Bid, the grand total price given in Schedule No. 5 (Grand Summary) will prevail and the bid amount in item (c) of the Letter of Price Bid will be corrected; and
 - (d) 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 arithmetical error, in which case the amount in figures shall prevail subject to (a), (b), and (c) above.
- 36.2 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 or its Bid-Securing Declaration executed.
- 37. Conversion to Single Currency**
- 37.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS .
- 38. Margin of Preference**
- 38.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.

39. Evaluation of Price Bids

- 39.1 The Employer shall use the criteria and methodologies listed in this clause. No other evaluation criteria or methodologies shall be permitted.
- 39.2 I. To evaluate a Price Bid, the Employer shall consider the following:
- (a) the bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;
 - (b) price adjustment for correction of arithmetical errors in accordance with ITB 36.1;
 - (c) price adjustment due to discounts offered in accordance with ITB 18.7;
 - (d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 33.3;
 - (e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 37; and
 - (f) the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).
- II. The Employer's evaluation of a Bid will exclude and not take into account,
- (a) in the case of Plant and Mandatory Spare Parts (Schedule No. 1) supplied from abroad, all taxes and duties, applicable in the Employer's country and payable on the Plant and Mandatory Spare Parts if the Contract is awarded to the Bidder; and
 - (b) in the case of Plant and Mandatory Spare Parts (Schedule No. 2) supplied from within the Employer's country, sales and other taxes, applicable in the Employer's country and payable on the Plant and Mandatory Spare Parts if the Contract is awarded to the Bidder.
- 39.3 If price adjustment is allowed in accordance with ITB 18.6, 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.
- 39.4 If this Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Price Bid, is specified in Section 3 (Evaluation and Qualification Criteria).
- 39.5 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. If the clarification given by the Bidder is found unsatisfactory then the Employer may reject such bid.
- 39.6 In case of e-submission bids, the Employer evaluates the bid on the basis of the information in the electronically submitted bid files. If the Bidder cannot substantiate or provide evidence to establish the information provided in e-

submitted bid through documents/ clarifications as per ITB Clause 29, the bid shall not be considered for further evaluation.

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| 40. Comparison of Bids | 40.1 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated Bid, in accordance with ITB 39.2. |
| 41. Employer's Right to Accept Any Bid, and to Reject Any or All Bids | 41.1 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

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| 42. Award Criteria | 42.1 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 eligible and qualified to perform the Contract satisfactorily. |
| 43. Letter of Intent to Award the Contract/ Notification of Award | 43.1 The Employer shall notify the concerned Bidder whose bid has been selected in accordance with ITB 42.1 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. |

- 43.2 If no bidder submits an application within a period of seven days of the notice provided under ITB 43.1, the Employer shall, accept the bid selected in accordance with ITB 42.1 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.

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.

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| 44. Performance Security | 44.1 Within Fifteen (15) days of the receipt of Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, as specified below from A class Commercial Bank using Sample Form for the Performance Security included in Section 9 (Contract Forms), or another form acceptable to the Employer. The performance security issued by any foreign Bank outside Nepal must be counter guaranteed by an "A" class commercial Bank in Nepal. |
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- i) If bid price of the bidder selected for acceptance is up to 15 (fifteen) percent below the approved cost estimate, the performance security

amount shall be 5 (five) percent of the bid price.

ii) For the bid price of the bidder selected for acceptance is more than 15 (fifteen) percent below of the cost estimate, the performance security amount shall be determined as follows:

Performance Security Amount = [(0.85 x Cost Estimate – Bid Price) x 0.5] + 5% of Bid Price.

The Bid Price and Cost Estimate shall be exclusive of Value Added Tax & Custom Duties.

- 44.2 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. In such case, the award process shall be repeated according to ITB 43.

45. Signing of Contract

- 45.1 The Employer and the successful Bidder shall sign the Contract Agreement within the period as stated ITB 44.1.
- 45.2 Within thirty (30) days from the date of issuance of notification pursuant to ITB 43.1 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.
- 45.3 If the bidder whose bid has been accepted fails to sign the contract as stated ITB 45.1, the Public Procurement Monitoring Office shall blacklist the bidder on recommendation of the Public Entity.

46. Complain and Review

- 46.1 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 (Employer) within Seven (7) days of providing the notice under ITB 43.1 by the Public Entity, for review of the proceedings stating the factual and legal grounds.
- 46.2 Late application filed after the deadline pursuant to ITB 46.1 shall not be processed.
- 46.3 The chief of Public Entity(Employer) shall, within five (5) days after receiving the application, give its decision with reasons, in writing pursuant to ITB 46.1:
- (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.

- 46.4 If the Bidder is not satisfied with the decision given in accordance with ITB 46.3,

or the decision is not given within five (5) days of receipt of application pursuant to ITB 46.1, 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 and furnishing the relevant supporting documents. The application may be sent by hand, by post, by courier, or by electronic media at the risk of the Bidder itself.

- 46.5 Late application filed after the deadline pursuant to ITB 46.4 shall not be processed
- 46.6 Within three (3) days of the receipt of application from the Bidder, pursuant to ITB 43.4, the Review Committee shall notify the concerned Public Entity to furnish its procurement proceedings, pursuant to ITB 46.3.
- 46.7 Within three (3) days of receipt of the notification pursuant to ITB 46.6, the Public Entity shall furnish the copy of the related documents to the Review Committee.
- 46.8 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 46.4.
- 46.9 The Bidder, filing application pursuant to ITB 46.4, shall have to furnish a cash amount or Bank guarantee from "A" class commercial bank equivalent to zero point one five percent (0.15%) of its quoted amount with the validity period of at least ninety (90) days from the date of the filing of application pursuant to ITB 46.4.
- 46.10 If the claim made by the Bidder pursuant to ITB 46.4 is justified, the Review Committee shall return the security deposit pursuant to ITB 46 to the applicant, within seven (7) days of such decision made.

Section 2 - Bid Data Sheet

This section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 - Instructions to Bidders.

A. General

ITB 1.1	<p>The number of the Invitation for Bids is : HDI/ICB/GIS/HTD-INA</p> <p>The Employer is: Nepal Electricity Authority</p> <p>The name of the ICB is: Procurement of Plant Design, Supply, Installation, Testing and Commissioning of 400 kV Hetauda and Inaruwa Substations.</p> <p>The identification number of the ICB is: HDI/ICB/GIS/HTD-INA</p> <p>The number and identification of lots (contracts) comprising this ICB is: NONE</p>
ITB 2.1	<p>The name of the Project is: Hetauda-Dhalkebar-Inaruwa 400 kV Substation Expansion Project.</p> <p>The Development Partner(DP) is: Not Applicable</p>
ITB 4.1 (a)	Maximum number of partner in a joint venture shall be : 3 (Three)
ITB 4.2	Eligible countries– all countries as per Section 5
ITB 4.4	A list of debarred firms is available at http://www.ppmo.gov.np , official sites government of Nepal and Nepal Electricity Authority.
ITB 4.9	<p>The domestic bidder shall submit the following documents at the time of Bid Submission:</p> <ul style="list-style-type: none"> • Company/Business Registration Certificate, PAN/VAT registration certificate, Tax Clearance Certificate or Proof of submission of income return for last fiscal year of the Bidder, and of each joint-venture partners in the case of a joint venture. <p>The foreign bidder shall submit the following documents at the time of bid submission:</p> <ul style="list-style-type: none"> • Legal and Business registration certificate of the Bidder, and of each joint-venture partners in the case of a joint venture, issued by the government of the country where the bidder or each joint venture partner is registered. <p>The foreign bidder shall declare to submit the following documents at the time of contact agreement : Notarized Power of attorney to sign the contract</p> <p>and after 45 days of contact agreement</p> <ul style="list-style-type: none"> • PAN/VAT registration certificate of Nepal • Temporary Construction License <p>But, Resident foreign bidder shall submit PAN/VAT certificate and tax clearance certificate or proof of submission of Income Return last fiscal year at the time of Bid Submission.</p> <p>Further,</p> <p>In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement which is legally binding on all partners shall be submitted at the time of Bid Submission. However, in case bid submitted by a JV with letter of intent to form a Joint Venture is successful bid, the specified Form of JV Agreement shall be signed as to be legally binding on all partners and submitted at the time of contract agreement.</p>

B. Contents of Bidding Documents

ITB 7.1	<p>The Project Manager Hetauda-Dhalkebar-Inaruwa 400kV Substation Expansion Project Transmission Directorate Nepal Electricity Authority Kharipati, Bhaktapur, Nepal Telephone: +977 1 6620018 Electronic mail address: hdi400kvss@nea.org.np Time for request: Requests for clarification should be received by the Employer no later than 15 days prior to the deadline for submission of bids.</p>
ITB 7.2	<p>Add the following second paragraph: Under Sub-clause 7.2. The Employer, upon the request from the potential bidders, may arrange the group site visit immediately after the Pre-bid conference. However, vehicle for site visit of the bidder and other logistics will be arranged by bidders themselves.</p>
ITB 7.4	<p>A Pre-Bid meeting shall take place at the following date, time and place: Date: 6 June, 2018 Time: 12:00 Noon. (Nepal Standard Time) Hetauda-Dhalkebar-Inaruwa 400kV Substation Expansion Project Transmission Directorate Nepal Electricity Authority Kharipati, Bhaktapur, Nepal Telephone: +977 1 6620018 The Venue may change in which case Employer will notify Electronically to all the bidders who purchased the Bidding document.</p>
ITB 7.5	<p>Time period to submit any questions in writing for the purpose of clarification at the Pre-Bid meeting is : 3 days prior to Pre-Bid meeting</p>

C. Preparation of Bids

ITB 11.2 (k)	The Bidder shall submit with its Technical Bid the following additional documents: None
ITB 11.3 (d)	The Bidder shall submit with its Price Bid the following additional documents: None
ITB 12.1	All the relevant forms must be completed as instructed in each form.
ITB 13.1	Alternative bids are not permitted
ITB 13.2	Alternatives to the Time Schedule shall not be permitted.
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the plant and services: None
ITB 16.1 (b)	The period following completion of plant and services in accordance with provisions of the contract shall be Eighteen Month (18) Months.
ITB 18.1	Bidders shall quote for the entire plant and services on a single responsibility basis.
IT 18.4(a)(i)	The Incoterm for quoting plant to be supplied from abroad is: CIP Boarder at Birgunj/ Bhairawaha /Biratnagar as appropriate

	The Incoterm for quoting plant manufactured within the Employer's country is: EXW.
ITB 18.6	The prices quoted by the Bidder shall not be adjustable.
ITB 19.1	<p>The currencies of the Bid shall be as follows: Nepalese Rupees (NRs.) or USD only.</p> <p>It is further instructed,</p> <p>(a) Price Schedule No. 1 (Plant, and Mandatory Spares Parts supplied from abroad)</p> <ul style="list-style-type: none"> The prices shall be quoted either in the currency of Nepalese Rupees (NRs.) or foreign currency (USD) only. <p>(b) Price Schedule No. 2 (Plant, and Mandatory Spares Parts supplied Within Employer's Country)</p> <ul style="list-style-type: none"> The prices shall be quoted in Nepalese Rupees (NRs.) only. <p>(c) Price Schedule No 4 (Installation Services)</p> <ul style="list-style-type: none"> The prices shall be quoted in Nepalese Rupees (NRs.) only. <p>Add this sentence in ITB</p> <p>"If any bidder happens to quote in USD for the price schedules which are specifically instructed to quote in NRs. and bid of such bidder is determined to be lowest evaluated and responsive bid, contract agreement will be done in equivalent NRs. @ exchange rate of Nepal Rastra Bank(NRB) 30 Days prior to bid closing date."</p>
ITB 20.1	The bid validity period shall be: One Hundred Twenty (120) days.
ITB 21.1	The Bidder shall furnish a bid security, from "A" class commercial bank with a minimum of NRs. 127,400,000.00 or an equivalent amount in USD @exchange rate of Nepal Rastra Bank 30 Days prior to the Deadline for Bid Submission, which shall be valid for 30 days beyond the validity period of the bid. If the bank guarantee is issued by a foreign bank, it shall be counter guaranteed by a "A" class commercial bank in Nepal.
ITB 22.1	In addition to the original Bid, the number of copies is: One (1)
ITB 22.2	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of power of attorney (either notarized or attested by the appropriate authority in the Bidder's home country).</p> <p>The Power of Attorney shall indicate that the person signing the Bid has the authority to sign the Bid and the Bid is binding upon the bidder during the full period of its validity. In case of a Joint venture Bid, the Power of Attorney shall be signed by the appropriate official of each of the JV partner.</p>

D. Submission and Opening of Bids

ITB 23.1	Bidders shall not have the option of submitting their bids electronically.
ITB 24.1	<p>For <u>bid submission purposes</u> only, the Employer's address is</p> <p>Hetauda-Dhalkebar-Inaruwa 400kV Substation Expansion Project</p> <p>Transmission Directorate</p> <p>Nepal Electricity Authority</p> <p>Kharipati, Bhaktapur, Nepal</p> <p>The deadline for bid submission is:</p> <p>Date: 2 July, 2018</p> <p>Time: 12:00 Hrs (NST)</p>

	In the event of the specified date for the submission of bids being declared a holiday for the Employer, the bids will be received up to the appointed time on the next working day. However, in such case, the validity of the bid security will be counted from the originally stipulated deadline date for bid submission.
ITB 27.1	The bid opening of Technical Bids shall take place at Hetauda-Dhalkebar-Inaruwa 400kV Substation Expansion Project Transmission Directorate Nepal Electricity Authority Kharipati, Bhaktapur, Nepal Date: 2 July, 2018 Time: 12:30 Hrs (NST)

E. Evaluation and Comparison of Bids

ITB 37.1	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices if permitted and expressed in various currencies into a single currency is: NRs. The source of exchange rate shall be: Nepal Rastra Bank The date for the exchange rate shall be: 30 days prior to the deadline for submission of bids.
ITB 38.1	A margin of preference shall apply. The application methodology shall be as stipulated in Section 3 (Evaluation and Qualification Criteria).
ITB39.5	The amount of the performance security be increased by Eight (8) percent of the quoted bid price.
ITB 46.3 (b)	The decision of the chief of Public Entity shall be final for the Bid amount up to the value: NRs. 30 Millions.

Section 3 - Evaluation and Qualification Criteria

Table of Criteria

1. Evaluation.....	2
1.1 Technical Evaluation	2
1.2 Alternative Technical Solutions	2
1.3 Economic Evaluation	2
1.3.5 Work, Services, Facilities, etc., to Be Provided by the Employer	3
1.3.6 Specific Additional Criteria.....	3
1.3.7 Domestic Preference	3
1.4 Multiple Contracts	3
2. Qualification	4
2.1 Eligibility.....	4
2.1.1 Conflict of Interest	4
2.1.2 Government-owned Entity	4
2.1.3 Development Partner Eligibility [if applicable other mention “Not Applicable”].....	4
2.1.4 UN Eligibility.....	4
2.1.5 VAT and PAN Registration	4
2.2 Pending Litigation	5
2.2.1 Pending Litigation	5
2.3 Financial Situation.....	5
2.3.1 Historical Financial Performance.....	5
2.3.2 Average Annual Construction Turnover	5
2.3.3 Financial Resources.....	6
2.4.1 General Experience	6
2.4.2 Specific Experience.....	6
(a) Contracts of Similar Size and Nature	6
(b) Experience in Key Activities.....	7
2.5 Personnel	7
2.6 Equipment	9
2.7 Subcontractors/ Manufacturers	10

1. Evaluation

1.1 Technical Evaluation

In addition to the criteria listed in ITB 34.1 (a)–(b), other relevant factors are as follows: **None**

1.2 Alternative Technical Solutions

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: **None**

1.3 Economic Evaluation

In addition to the criteria listed in ITB 39.2 I (a)–(e), other relevant factors are as follows:

Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an “**Evaluated Bid Price.**” **Bid prices quoted by bidders shall remain unaltered.**

1.3.1 Quantifiable Deviations and Omissions

Pursuant to ITB 33.3, the cost of all quantifiable nonmaterial nonconformities or omissions from the contractual and commercial conditions shall be evaluated. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of Bids.

1.3.2 Time Schedule

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining the time for completion of pre-commissioning activities is: **18 months**

No credit will be given for earlier completion. Bids offering a completion date beyond the specified period shall be **rejected.**

1.3.3 Operating and Maintenance (O&M) Costs

The O&M cost factors for calculating the life cycle cost are as follows: **None**

1.3.4 Functional Guarantees of the Facilities

1.3.4.1 Losses Capitalization

The transformer/reactor losses will be capitalized as follows for evaluation purpose:

S.N.	Type of Losses	Capitalization Rate (US\$ per kW)	
		For Transformers	For Reactor
1	No load losses	4684	Not Applicable
2	Load losses	1180	1180
3	Auxiliary Losses	393	393

1.3.4.2 Guaranteed Transformer/reactor losses.

The bidder shall declared offered Guaranteed Transformers/Reactors losses in the Section-4 Bidding Forms- FUNC.

(i) **Guaranteed values not reached.**

If the individual losses of a transformer/reactor as measured during test exceeds the values guaranteed in the Section-4 Bidding Forms- FUNC, then for each kilowatt of

losses in excess of the losses guaranteed, an amount at the rates of twice the rates specified above for no-load, load and Auxiliary Losses shall be deducted from the Contract Price of the successful Bidder.

(ii) Performance Guarantee

The performance figures quoted on Technical Data Sheet shall be guaranteed within the tolerances permitted by relevant standards listed under Part-II, Employer's Requirement, and shall become a part of the successful Bidder's Contract. In case of loss capitalization, no tolerance shall be permitted for the guaranteed value. The transformer/reactor will be rejected, if the measured no-load, load and Auxiliary Losses exceed the guaranteed value by over 15% provided that the total losses do not exceed 10% as specified.

1.3.5 Work, Services, Facilities, etc., to Be Provided by the Employer: *None*

1.3.6 Specific Additional Criteria: *None*

1.3.7 Domestic Preference

A margin of preference shall be applied to *domestically manufactured equipment* in accordance with the following provisions:

- (a) The preference margin shall not be applied to the whole facilities but only to the eligible domestically produced Plant and Equipment within the Contract;
- (b) Plant and Equipment offered from outside the Employer's country shall be quoted CIP (Section 4, Bidding Forms, Schedule No.1) and Plant and Equipment offered locally shall be quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable) free of sales and similar taxes (Section 4, Bidding Forms, Schedule No.2);
- (c) All other cost components for services and works such as costs for local handling, transportation, storage, installation, and commissioning shall be quoted separately (Section 4 Bidding Forms Schedule No. 4 – Installation and Other Services);
- (d) In the comparison of Bids, only the CIP prices component of each Bid for the Plant and Equipment offered from outside the Employer's country shall be increased by fifteen percent (15%);
- (e) No margin of preference shall be applied to any of the services or works included in the contract; and
- (f) Bidders shall not be permitted or required to modify the mix of local and foreign plant and Equipment after bid opening.
- (g) *Bidders shall not be permitted to quote the price for the same items in both schedules (Schedule No.1 & Schedule No.2).*

1.4 Multiple Contracts

Not Applicable

2. Qualification

It is the legal entity or entities comprising the Bidder, and not the Bidder's parent companies, subsidiaries, or affiliates, that must satisfy the qualification criteria described below.

2.1 Eligibility

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 Development Partner Eligibility [Not Applicable]

Not having been declared ineligible by Development Partner, as described in ITB Sub-Clause 4.4.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Application Submission Sheet
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2.1.4 UN Eligibility

Not having been declared ineligible based on a United Nations resolution or Employer's country law, as described in ITB Sub-Clause 4.7.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid
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2.1.5 VAT and PAN Registration

a. Domestic Bidder	Bidders required to meet conditions of ITB Sub-Clause 4.9.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	PAN and VAT registration certificate
b. Foreign Bidder	Bidders required to meet conditions of ITB Sub-Clause 4.9.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Declaration to submit PAN /VAT and temporary construction license Registration Certificate after 45 days of the Contract agreement

2.2 Pending Litigation

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One 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 50 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

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

2.3.1 Historical Financial Performance

Submission of audited balance sheets and income statements, for the last three (3) years to demonstrate the current soundness of the applicants financial position. <i>As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.</i>	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 1 with attachments
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2.3.2 Average Annual Turnover

Minimum average annual turnover of 47 MUSD , calculated as total certified payments received for contracts in progress or completed, <i>within last three years</i> .	must meet requirement	must meet requirement	must meet 25 % of the requirement	must meet 40 % of the requirement	Form FIN - 2
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2.3.3 Financial Resources

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: <ul style="list-style-type: none"> ▪ The following cash-flow requirement: 10.0 MUSD. ▪ The overall cash flow requirements for this contract and its current commitments. 	must meet requirement	must meet requirement	must meet 25 % of the requirement	must meet 40 % of the requirement	Form FIN – 3 and Form Fin – 4
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2.4 Experience

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

2.4.1 General Experience

Work Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last 5 years prior to the applications submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP -1
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2.4.2 Specific Experience

(a) Contracts of Similar Size and Nature

Participation as contractor, management contractor, or subcontractor, in at least one (1) contracts within the last 10 years, each with a value* of at least 37 MUSD that 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 6-Employer's Requirement.	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 2(a)
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The similar to proposed works here shall mean the contracts of design, supply, installation and commissioning of 400 kV or above voltage class GIS substations.

Note:

* For Contracts under which the Bidder participated as a joint venture member, only the Bidder's share by value shall be considered.

** Substantial completion of the projects here shall mean the 80% completion of total scope of works in all respect (technical as well as financial) and is applicable for the ongoing projects only.

(b) Experience in Key Activities

For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum construction experience in the following key activities:					
i) Have supplied, installed, tested and commissioned not less than two(2) GIS substations having at least cumulatively 15 (Fifteen) GIS circuit breaker bays of 400 kV or above and 40 kA short circuit level or higher and the same should be in successful operation.	must meet all requirements	must meet all requirements	Have installed, tested and commissioned at least cumulatively 4 (Four) GIS circuit breaker bays of 400 kV or above and 40 kA short circuit level or higher and the same should be in successful operation.	not applicable	Form EXP-2(b-i)
ii) Have supplied, installed, tested and commissioned at least cumulative 1000 MVA three Phase Power/Auto Transformers of 400 kV or higher class voltage rating (or equivalent capacity in banks of 3 single phase units) and the same should be in successful operation.	must meet all requirements	must meet all requirements	Have installed, tested and commissioned at least cumulative 200 MVA three Phase Power/Auto Transformers of 400 kV or higher class voltage rating (or equivalent capacity in banks of 3 single phase units) and the same should be in successful operation.	not applicable	Form EXP-2(b-ii)

Note:

1. In case bidder is a holding company, the financial position criteria referred in above shall be of that holding company only (i.e excluding its subsidiary/ group companies). In case bidder is a subsidiary of a holding company, financial position criteria referred to in clause 2.3.1, 2.3.2 and 2.3.3 above shall be of that subsidiary company only (i.e excluding its holding company). **The lead partner must meet, not less than 40% of the Financial Position criteria referred to in clause 2.3.2 and 2.3.3 above.**
2. For Company formed by merger/de-merger of two or more companies or divisions of such companies, the financial data of the company shall be considered for the completed financial year for

which it has been in existence (if financial results are available) and for balance period financial data of related business of Constituents (duly certified by the Company Secretaries of the constituents or a public accountant) shall be considered.

3. Duly Notarized End-user certificates, Taking over Certificates (TOC), Bill of Quantities, relevant pages of Contract Agreement etc. for all the relevant projects/contracts undertaken by the bidder and all the partners in JV shall be submitted along the bid to substantiate the work experience. In case of works executed under a contract that had been awarded on a Joint Venture, the experience of individual Joint Venture partner shall be considered limited to the scope of that partner under the said contract.
4. In case bidder is a holding company, the specific experience referred to in clause 2.4.2 (a) and (b) above shall be of that holding company only (i.e. excluding its subsidiary/group companies). In case bidder is a subsidiary of a holding company, the technical experience referred to in clause 2.4.2 (a) and (b) above shall be of that subsidiary company only (i.e. excluding its holding companies).
5. Successful operation means certificate issued by the Employer certifying the operation without any adverse remark.
6. For reckoning the sub-contractors experience, completion certificate from end user, completion certificate from the concerned Project Authority is only acceptable and those documents shall be duly notarized.
7. In case, the above required Financial, Experiences and other relevant documents are in other than English language, these documents shall be translated to English and Duly notarized.
8. For the purpose of qualifying requirement, one no. of circuit breaker bay shall be considered as a bay used for controlling a line or a transformer or a reactor or a bus section or a bus coupler and comprising of at least one circuit breaker, two dis-connectors and three nos. of single phase CTs/ Bushing.

2.5 Personnel

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

No.	Position	Numbers	Specific works Experience
1	Project Manager	1	A graduate Engineer with minimum 7 years of experience and specifically 5 years or more in 400 kV or above substation projects.
2.	Site Manager	2	A Bachelor in Electrical/Civil Engineering with minimum 3 years of site supervision experience in in 400 kV or above substation projects.
3.	Electrical Engineer	2	A Bachelor in Electrical Engineering with minimum 2 years of site supervision experience in in 400 kV or above substation projects.
4.	Civil Engineer	2	A Bachelor in Civil Engineering with minimum 2 years of site supervision experience in 400 kV or above substation projects.
5.	Substation Design Engineer (Electrical)	1	A Bachelor in Civil Engineering with minimum 3 years of Substation Design experience of 400 kV or above Substation projects.
6.	Substation Design Engineer (Civil/Structural)	1	A Bachelor in Structural/Civil Engineering with minimum 3 years of Design Experience of 400 kV or above substation structures and Foundations.

In case the bidder proposes to consider Personnel that may be spared from committed/ongoing contracts for evaluation, the bidder shall provide details of personnel which will be spared from

such committed/ongoing contracts based on the physical progress at the date of bid submission. The details so submitted by the bidder and the physical progress of the ongoing contracts only the spared personnel shall be taken into the consideration during evaluation.

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

Note: The bidder shall make sure the personnel declared for the position above shall not be altered in any case.

2.6 Equipment

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

Item No.	Equipment Type and Characteristics	Min. Number Required
1	Oil filter machine (≥ 100 kV)	2
2	Crane (10 Ton capacity)	2
3	Concrete Batching Plant	2
4	Vibrator with needle and plate both	4
5	Excavator	2
6	Cable Testing Equipment	2
7	Protection testing and calibration equipments	2
8	Total Station/Theodolite	2
9	Relay Test Kit	2

In case the Bidder proposes to consider Equipment that may be spared from committed/ongoing contracts for evaluation, the Bidder shall provide details of Equipment which will be spared from committed / ongoing contracts clearly demonstrating the availability of such equipment with respect to the physical progress of the ongoing contracts on the date of bid submission. Based on the details so submitted by the Bidder, only the spared equipment proposed for the contract shall considered for evaluation.

In case of Equipments to be leased/hired the same procedures as mentioned above shall apply. The Bidder must demonstrate that it has the required equipments and bidder shall provide details of the proposed equipments in the relevant information forms included in Section 4 (Bidding Forms).

The Bidder/Lease Owner shall be solely responsible for the data provided. However, this shall not limit the right of employer to verify the authenticity of submitted information. The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section 4 (Bidding Forms).

2.7 Subcontractors/ Manufacturers

Subcontractors or Manufacturers for the following major items of plant and services must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met	Documents Submission Requirements
1	Gas Insulated Switchgear	<p>(i) At least five (5) years in manufacturing of Gas Insulated Switchgear.</p> <p>(ii) Must have designed, manufactured, tested, supplied, at least two (2) GIS substations having cumulatively Twenty (20) circuit breaker bays of 400 kV or above and 40 kA short circuit level or higher, which should be in successful operation.</p> <p>(iii) Manufacturer shall also have supplied at least one (1) Gas Insulated Switchgear (GIS) of 245kV or above voltage class equipments during last 10 years outside the Manufacturer's home country, which should be in successful operation.</p> <p>(iv) Must have successfully carried out the complete type test as per IEC in Short-Circuit Testing Liaison (STL) – Accredited Laboratory on 400 kV voltage class GIS Switchgears (Circuit Breaker, Disconnectors, Grounding Switches, Instrument Transformers, SF6/Air & Oil Bushing etc;).</p> <p>If the manufacturer had not successfully carried out complete type test as per IEC in Short-Circuit Testing Liaison (STL) - Accredited Laboratory as on the originally scheduled date of bid opening, bidder have to submit undertaking letter along with bid to carry out the mentioned test in Short-Circuit Testing Liaison (STL) - Accredited Laboratory from offered Manufacturer without any extra cost to Employer.</p> <p>The validity of type test reports of GIS shall be within last 10 (ten) years prior to the originally Scheduled date of bid opening. In case the test reports are of the test conducted earlier than 10 (ten) years prior to the originally Scheduled date of bid opening, the contractor shall repeat these test(s) at no extra cost to the Employer.</p>	Form EXP-3
2	Power Transformers	<p>(i) Must have manufacturing experience of at least 5 years prior to bid opening.</p> <p>(ii) Must have designed, manufactured, tested and supplied at least at least 12 (Twelve) units of Power/Auto Transformers of 400 kV class or above within last 5 years prior to bid opening, which should be in successful operation.</p> <p>(iii) Manufacturer should have successfully carried out Dynamic Short Circuit test on 3-phase, 315MVA, 400/220/33kV and 1-phase, 167MVA, 400/$\sqrt{3}$/220/$\sqrt{3}$/33kV Auto transformers as per IEC in accredited laboratory (accredited based on ISO/IEC Guide 25/17025 or EN 45001 by the national accreditation body of the country where laboratory is located) as on the originally scheduled date of bid opening</p>	

Item No.	Description of Item	Minimum Criteria to be met	Documents Submission Requirements
		<p>and shall enclose the relevant Test Report/certificate along with bid.</p> <p>If the manufacturer had not successfully carried out Dynamic Short Circuit test on 3-phase, 315MVA, 400/220/33kV and 1-phase, 167MVA, 400/$\sqrt{3}$/220/$\sqrt{3}$/33kV Auto transformers as per IEC in accredited laboratory (accredited based on ISO/IEC Guide 25/17025 or EN 45001 by the national accreditation body of the country where laboratory is located) as on the originally scheduled date of bid opening, bidder have to submit undertaking letter along with bid to carry out the out Dynamic Short Circuit test on 3-phase, 315MVA, 400/220/33kV and 1-phase, 167MVA, 400/$\sqrt{3}$/220/$\sqrt{3}$/33kV Auto transformers from offered Manufacturer in accredited laboratory (accredited based on ISO/IEC Guide 25/17025 or EN 45001 by the national accreditation body of the country where laboratory is located) without any extra cost to Employer.</p> <p>(iv) The validity of test reports of transformer shall be within last 10 (ten) years prior to the originally scheduled date of bid opening. In case the test reports are of the test conducted earlier than 10 (ten) years prior to the originally Scheduled date of bid opening, the contractor shall repeat these test(s) at no extra cost to the Employer. Further, design review of offered 400 kV Class Auto transformer shall be carried out based on the design of short circuit tested Autotransformer.</p>	
3	OLTC	OLTC shall be offered from among the following manufacturers: MR Germany, ABB Sweden.	
4	Outdoor Capacitor Voltage Transformer for 420kV	Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening.	
5	Outdoor Surge Arrester for 400 kV, 220kV and 33 kV	Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening.	
6	Substation Automation System(SAS), Relays, Energy Meter (Control and Protection Panel)	<p>(i) Must have designed, manufactured, tested and supplied at least twice the units of SAS, Relays, Energy Meter (Control and Protection Panel) as per IEC 61850 in 400 kV and above voltage level substations within last 5 years prior to bid opening date.</p> <p>(ii) Manufacturer shall also have supplied at least one Substation Automation System (SAS), Relays, Energy Meter (Control and Protection Panel) as per IEC 61850 of 400kV or above voltage class equipments during last 5 years outside the Manufacturer's home country, which should be in successful operation.</p>	
7	Reactor	<p>(i) Must have manufacturing experience of at least 5 years prior to bid opening.</p> <p>(ii) Must have designed, manufactured, tested and supplied at least 10 (ten) units of Reactors of 400 kV class or above within last 5 years prior to bid opening, which should be in</p>	

Item No.	Description of Item	Minimum Criteria to be met	Documents Submission Requirements
		successful operation.	
8	Station/LT Transformer	Must have designed, manufactured, tested and supplied at least ten (10) units of LT Transformers within last 5 years prior to bid opening, which should be in successful operation.	
9	Communication Equipments	Must have designed, manufactured, tested and supplied at least ten (10) complete communication units for the major HV transmission substations in accordance with applicable IEEE/IEC communication recommendations within last 5 years prior to bid opening, which should be in successful operation.	
10	220 V & 48 V Battery & Battery Chargers	Must have designed, manufactured, tested and supplied at least 10 sets for transmission system substations and installed in the atmospheric conditions similar to these of Nepal within last 5 years prior to bid opening, which should be in successful operation.	
11	Steel Structures	All steel structure shall meet the requirement of ANSI/ASTM/IS/all well-established national and international standards. Steel fabricator shall provide the evidence of previous supply of at least 200 Tons of galvanized construction steel for the major transmission /substation projects within last 5 years prior to bid opening.	
12	RIP Bushing (400 and 220kV)	i. Must have manufacturing experience of at least 5 (Five) years. ii. Must have designed, manufactured tested and supplied RIP Bushing of 220, 400 kV or higher voltage Class, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid opening, which should be in successful operation.	
13	SF6 Circuit Breaker for 220 kV and 72.5 kV	i. Must have manufacturing experience of at least 5 (Five) years. ii. Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening, which should be in successful operation.	
14	Isolator for 220 kV, and 72.5 kV	i. Must have manufacturing experience of at least 5 (Five) years. ii. Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening, which should be in successful operation.	
15	Current Transformer for 220 kV and 72.5 kV	i. Must have manufacturing experience of at least 5 (Five) years. ii. Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening, which should be in successful operation.	
16	Voltage Transformer for 72.5 kV	i. Must have manufacturing experience of at least 5 (Five) years. ii. Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening, which should be in successful operation.	

Item No.	Description of Item	Minimum Criteria to be met	Documents Submission Requirements
17	Post Insulator for 420kV, 245kV, 72.5 kV and 33 kV	<ul style="list-style-type: none"> i. Must have manufacturing experience of at least 5 (Five) years. ii. Must have designed, manufactured, tested and supplied at least twice the units required for this contract within last 5 years prior to bid opening, which should be in successful operation. 	

Note:

In the case of a Bidder who offers to supply and install major items of plant under the contract, which the Bidder did not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section 4 (Bidding Forms), showing that the Bidder has been duly authorized by the Manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. Failure to submit the Manufacturer's authorization at the first instance is considered a minor, nonmaterial omission and shall be subject to clarification. However, failure of the Bidder to submit the omitted authorization shall lead to rejection of the Subcontractor or Manufacturer of the item under evaluation in accordance with ITB 35.4.

The manufacturers of above-mentioned major items must hold valid ISO 9001 quality (including design in scope of registration) certificate.

Sales record and user certificates as required and other documentary evidence to support the experience of the manufacturer of the above items shall also be submitted along with the bid to substantiate the experience of the proposed manufacturers.

The Bidder shall propose the type tested materials. The Successful Bidder shall also submit the type test certificates for each of the above-mentioned items. The type test report shall meet the minimum criteria set forth in Technical Specification of Section 6- Employers Requirement.

The Bidder shall fill the technical data sheet for all the major items as mentioned above. The failure to submit the technical data sheet for the major items shall cause the rejection of the Bid.

Section 4 - Bidding Forms

This section contains the forms to be completed by the Bidder and submitted as part of its Bid.

Table of Forms

Letter of Technical Bid	2
Letter of Price Bid.....	4
Price Schedules	6
Bid Security	7
Technical Proposal.....	8
Site Organization.....	9
Method Statement	10
Mobilization Schedule.....	11
Construction Schedule	12
Proposed Subcontractors and/or Manufacturers for Major Items of Plant and Services	15
Manufacturer's Authorization.....	16
Time Schedule	17
Bidder's Qualification	19
Form ELI - 1: Bidder's Information Sheet.....	20
Form ELI - 2: Joint Venture Information Sheet	21
Form LIT - 1: Pending Litigation	22
Form FIN - 1: Financial Situation.....	23
Form FIN - 2: Average Annual Turnover	24
Form FIN – 3: Financial Resources.....	25
Form FIN- 4: Current Contract Commitments / Works in Progress.....	26
FIN - 5: Self-Assessment Tool for Bidder's Compliance to Financial Resources	26
Form EXP – 1: General Experience.....	28
Form EXP – 2(a): Specific Experience (Contracts of Similar Size and Nature)	29
Form EXP – 2(b-i): Experience in Key Activities	30
Form EXP – 2(b-ii): Experience in Key Activities.....	31
Form EXP - 3: Subcontractors / Manufacturers	32
FORM: POWER OF ATTORNEY FOR JOINT VENTURE (CONSORTIUM)	33
FORM: FOR UNDERTAKING BY THE JOINT VENTURE PARTNERS (CONSORTIUM)	35
FORM: LETTER OF INTENT BY JV PARTNERS TO ENTER INTO JV AGREEMENT (CONSORTIUM)...	38

Letter of Technical Bid

-- Note --

The bidder must accomplish the Letter of Technical Bid on its letterhead clearly showing the bidder's complete name and address.

Date:

ICB No.:

Invitation for Bid No.:

To: [. . . insert complete name of the employer . . .]

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) 8.
- (b) We offer to design, manufacture, test, deliver, install, pre-commission, and commission in conformity with the Bidding Document the following Plant and Services: [. . . insert narrative . . .]
- (c) Our Bid consisting of the Technical Bid and the Price Bid shall be valid for a period of [. . . insert bid validity period as specified in ITB 20.1 of the BDS . . .] 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.
- (d) We, including any Subcontractors or Manufacturers for any part of the Contract, have or will have nationalities from eligible countries, in accordance with ITB 4.2.
- (e) 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.
- (f) We are not participating, as a Bidder in more than one bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13.
- (g) We declare that, we including any subcontractors or suppliers for any part of the contract do not have any conflict of interest in the proposed procurement proceedings and we have not been blacklisted as per ITB 3.4 and punished for an offense relating to the concerned profession or business.

- (h) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].¹
- (i) We agree to permit EMPLOYER/DP 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 EMPLOYER/DP.
- (j) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Employer's Requirements) and our technical proposal, or as otherwise agreed with the Employer.

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

¹ Use one of the two options as appropriate.

Letter of Price Bid

-- Note --

The bidder must accomplish the Letter of Price Bid on its letterhead clearly showing the bidder's complete name and address.

Date:

ICB No.:

Invitation for Bid No.:

To: [. . . insert complete name of the employer . . .]

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
- (b) We offer to design, manufacture, test, deliver, install, pre-commission, and commission in conformity with the Bidding Document the following Plant and Services: [. . . insert narrative . . .]
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is the sum of

[amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures]

The total bid price from the Grand Summary (Schedule No. 5) should be entered by the Bidder inside this box. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the bid.

- (d) The discounts offered and the methodology for their application are as follows: [. . . insert discounts and methodology for their application if any . . .]
- (e) Our Bid shall be valid for a period of [. . . insert bid validity period as specified in ITB 20.1 of the BDS . . .] days from the date fixed for the 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) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: ¹

Name of Recipient	Address	Reason	Amount
.....
.....

- (h) 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.
- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (j) We agree to permit EMPLOYER/DP 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 EMPLOYER/DP.

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

¹ If none has been paid or is to be paid, indicate "None."

Price Schedules

(Provided in Volume III)

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 [insert name of the Bidder] (hereinafter called "the Bidder") intends to submit its bid (hereinafter called "the Bid") to you for the execution of name of Contract 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 name of Bank. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of amount 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 or modifies 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.
- (d) is involved in fraud and corruption in accordance with the ITB

This guarantee will remain in force up to and including the date number days from 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. 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. 758.

... 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

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Personnel

Equipment

Proposed Subcontractors for Major Items of Plant and Services

Manufacturer's Authorization

Time Schedule

Functional Guarantee of the Proposed Facilities

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

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 III (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

No.	Name	Position	Academic Qualification	Total Work Experience [Years]	Experience in Similar Works [years]
1.					
2.					

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*			
Personal 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

Form EQU: 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 III (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.

For the equipment under Bidder's ownership

No.	Equipment Type and Characteristics	Total Nos. of Equipment under Bidder's Ownership	No. of Equipment engaged/proposed for ongoing/committed contracts	Nos. of Equipment proposed for this contract
1.				
2.				

For the Equipment to be leased/hired

No.	Equipment Type and Characteristics	Total Nos. of Equipment under the ownership of lease/hire provider	No. of Equipment engaged/committed for other works	Nos. of Equipment proposed to be leased/hired for this contract
1.				
2.				

Type of Equipment*		
Equipment Information	Name of manufacturer	Model and power rating
	Capacity*	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	email
Agreements	Details of rental / lease / manufacture agreements specific to the project	

Proposed Subcontractors and/or Manufacturers for Major Items of Plant and Services

The following Subcontractors and/or Manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item.

Major Items of Plant and Services	Proposed Subcontractors or Manufacturers	Nationality

Manufacturer's Authorization

Date: *[insert date (as day, month and year) of bid submission]*

ICB No.: *[insert number of bidding process]*

To: *[insert complete name of the employer]*

WHEREAS

We *[insert complete name of the manufacturer or manufacturer's authorized agent]*, who are official manufacturers or agent authorized by the Manufacturer of *[insert type of goods manufactured]*, having factories at *[insert full address of manufacturer's factories]*, do hereby authorize *[insert complete name of the bidder]* to submit a bid the purpose of which is to provide the following goods, manufactured by us *[insert name and/or brief description of the goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the goods offered by the above firm.

Signed: *[insert signature(s) of authorized representative(s) of the manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the manufacturer]*

Title: *[insert title]*

Duly authorized to sign this Authorization on behalf of *[insert complete name of the manufacturer]*

Dated on _____ day of _____, _____ *[insert date of signing]*

-- Note --

The bidder shall require the manufacturer to fill out this form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the manufacturer. The bidder shall include it in its bid, if so indicated in the BDS.

Time Schedule

To be used by Bidder when alternative Time for Completion is invited in ITB 13.2.

Functional Guarantee of the Proposed Facilities

Form FUNC

The Bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Employer in para. 1.2 (c) of Section III. Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

Required Functional Guarantee	Value of Functional Guarantee of the Proposed Plant and Equipment		
	No Load Loss (KW)	Load Loss (KW) at 75 Deg C	Auxiliary Loss (KW) at 75 Deg C
(1) 400/220/33 KV, 315 MVA, 3-Ph Autotransformer			
(2) 400/√3/220/√3/33 KV, 167 MVA, 1-Ph Autotransformer			
(3) 50 MVAR, 420kV Bus Shunt Reactor	Not Applicable		Not Applicable
(4) 33/0.4 kV, 630 KVA Station Transformer			Not Applicable

Loss capitalization

The guaranteed transformers/reactor losses will be capitalized as follows for evaluation purpose:

S.N.	Type of Losses	Capitalization Rate (US\$ per kW)	
		For Transformers	For Reactor
1	No load losses	4684	Not Applicable
2	Load losses	1180	1180
3	Auxiliary Losses	393	393

Guaranteed values not reached.

If the individual losses of a transformer/reactor as measured during test exceeds the values Guaranteed in the Bid, then for each kilowatt of losses in excess of the losses guaranteed, an amount at the rates of twice the rates specified above for no-load losses, load-losses and auxiliary Losses shall be deducted from the Contract Price of the successful Bidder.

Performance Guarantee

The performance figures quoted on Technical Data Sheet shall be guaranteed within the tolerances permitted by relevant standards listed under Part-II, Employer's Requirement, and shall become a part of the successful Bidder's Contract. In case of loss capitalization, no tolerance shall be permitted for the guaranteed value. The transformer/reactor will be rejected, if the measured no-load, load and auxiliary losses exceed the guaranteed value by over 15% provided that the total losses do not exceed 10% as specified.

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 a Joint Venture, 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 number(s), fax number(s), e- mail address)	
<p>Attached are copies of the following documents:.</p> <p><input type="checkbox"/> 1. In case of a single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 22.2</p> <p><input type="checkbox"/> 3. In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.1</p> <p><input type="checkbox"/> 4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5</p>	

Form ELI - 2: Joint Venture Information Sheet

Each member of the Joint Venture must fill out this form separately. Subcontractor must fill out this form.

Joint Venture/Subcontractor Information	
Bidder's legal name	
Joint Venture Partner's or Subcontractor's legal name	
Joint Venture Partner's or Subcontractor's country of constitution	
Joint Venture Partner's or Subcontractor's year of constitution	
Joint Venture Partner's or Subcontractor's legal address in country of constitution	
Joint Venture Partner's or Subcontractor's authorized representative information (name, address, telephone number(s), fax number(s), e-mail address)	
Attached are copies of the following documents: <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 ITB 4.2 <input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 22.2 <input type="checkbox"/> 3. In the case of a government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5 	

Subcontractors are those listed in Technical Proposal – Proposed Subcontractors and/or Manufacturers for Major Items of Plant and Services.

Form LIT - 1: Pending Litigation

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

Pending Litigation			
<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 US\$ Equivalent	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 5 Years [in NRs or Equivalent US\$]										
	Year 1		Year2		Year3		Year4		Year5	
	Amount Currency	Exchange rate	Amount Currency	Exchange rate	Amount Currency	Exchange e rate	Amount Currency	Exchang e rate	Amount Currency	Exchang e rate

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 two to five 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).

Note: Attested Financial reports, including balance sheets, profit and loss statements and auditors reports for the last 5 years should be attached.

In case of e-submission the attachments should not be uploaded but shall be submitted on notification by the Employer as per ITB 27.

Form FIN - 2: Average Annual 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 in NRs or in US Dollars in case of foreign bidders at the rate of exchange **at the end of the period reported**.

Annual Turnover Data for the Last 3 Years			
Year	Amount Currency	Exchange Rate	US\$ Equivalent
Average Annual Construction Turnover			

Form FIN – 3: Financial Resources

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

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in Section 3 (Evaluation and Qualification Criteria)

Financial Resources		
No.	Source of financing	Amount in NRs for Domestic Bidders Amount (US\$ Equivalent) for Foreign Bidders
1		
2		
3		
	Total Available Financial Resources	

Note:

Supporting documents for the statements above should be attached herewith. The letter from the Bank must be unconditional.

Form FIN- 4: Current Contract Commitments / Works in Progress

Bidders and each partner to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name below:

Joint Venture Partner: _____

Current Contract Commitments						
No.	Name of Contract	Employer's Contact (Address, Tel, Fax)	Contract Completion Date	Outstanding Contract Value (X) ^a	Remaining Contract Period in months (Y) ^b	Monthly Financial Resources Requirement (X / Y)
1						
2						
3						
4						
Total Monthly Financial Requirement for Current Contract Commitments						\$

Supporting documents issued by the concerned agencies should be attached herewith.

^a Remaining outstanding contract values to be calculated from 28 days prior to the bid submission deadline (\$ equivalent based on the foreign exchange rate as of the same date).

^b Remaining contract period to be calculated from 28 days prior to bid submission deadline.

Form FIN - 5: Self-Assessment Tool for Bidder's Compliance to Financial Resources (Criterion 2.3.3 of Section 3)

This form requires the same information submitted in Forms FIN - 3 and FIN - 4. All conditions of "Available Financial Resources Net of CCC \geq Requirement for the Subject Contract" must be satisfied to qualify.

Form FIN - 5A: For Single Entities

For Single Entities: (A)	Total Available Financial Resources from FIN – 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
_____ (Name of Bidder)				

Form FIN - 5B: For Joint Ventures

For Joint Ventures: (A)	Total Available Financial Resources from FIN – 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
One Partner:					
_____ (Name of Partner)				
Each Partner:					
_____ (Name of Partner 1)				
_____ (Name of Partner 2)				
_____ (Name of Partner 3)				
All partners combined	$\Sigma D =$ Sum of available financial resources net of current contract commitments for all partners		$\Sigma D =$ _____	

- Note -

Form FIN – 5 is made available for use by the bidder as a self-assessment tool, and by the employer as an evaluation work sheet, to determine compliance with the financial resources requirement as stated in 2.3.3. Failure to submit Form FIN - 5 by the Bidder shall not lead to bid rejection.

Form EXP – 1: General Experience

Fill out one (1) form per contract.

General Experience		
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		
		\$
If partner in a Joint Venture 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 Similarity in Accordance with Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria)		

Form EXP – 2(a): Specific Experience (Contracts of Similar Size and Nature)

Fill out 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		
If partner in a Joint Venture 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 Similarity in Accordance with Criterion 2.4.2 of Section 3 (Evaluation and Qualification Criteria)		

Form EXP – 2(b-i): Experience in Key Activities

Fill out one (1) form per contract.

Experience in 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	\$	
If partner in a Joint Venture 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 Criterion 2.4.2 of Section 3 (Evaluation and Qualification Criteria)		

Form EXP – 2(b-ii): Experience in Key Activities

Fill out one (1) form per contract.

Experience in 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		
If partner in a Joint Venture 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 Criterion 2.4.2 of Section 3 (Evaluation and Qualification Criteria)		

Form EXP - 3: Subcontractors / Manufacturers

Fill out one (1) form per contract.

Contract for the Major Items		
Contract No of	Contract Identification	
Award Date		Completion Date
Role in Contract	<input type="checkbox"/> Supplier <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	
Total Contract Amount		
If partner in a Joint Venture 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 Major Items in Accordance with Criterion 2.7 of Section 3 (Evaluation and Qualification Criteria)		

FORM: POWER OF ATTORNEY FOR JOINT VENTURE (CONSORTIUM)

KNOW ALL MEN BY THESE PRESENTS THAT WE , the Partners whose details are given hereunder have formed a Joint Venture under the laws of(*)/intend to form a Joint Venture(*) [(*) delete whichever is not applicable] and having our Registered Office(s)/Head Office(s) at (hereinafter called the 'Joint Venture' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) acting through M/s being the Partner in-charge do hereby constitute, nominate and appoint M/s..... a Company incorporated under the laws of and having its Registered/Head Office at as our duly constituted lawful Attorney (hereinafter called "Attorney" or "Authorized Representative" or "Partner In-charge") to exercise all or any of the powers for and on behalf of the Joint Venture in regard to IFB No..... the bids for which have been invited by Nepal Electricity Authority, Hetauda Dhalkebar Inaruwa 400 kV Substation Expansion Project (hereinafter called the 'Employer') to undertake the following acts:

- i) To sign and submit proposal and participate in the aforesaid Bid Specification of the Employer on behalf of the "Joint Venture".
- ii) To negotiate with the Employer the terms and conditions for award of the Contract pursuant to the aforesaid Bid and to sign the Contract with the Employer for and on behalf of the "Joint Venture".
- iii) To do any other act or submit any document related to the above.
- iv) To receive, accept and execute the Contract for and on behalf of the "Joint Venture".

For the above purpose, the person(s) authorized by the Partner In-charge shall be the person(s) authorized to act on behalf of the "Joint Venture" as per the Power of Attorney given to him/her/them by the Partner In-Charge,

It is clearly understood that all the partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms and the Partner In-charge (Lead Partner) shall ensure performance of the Contract(s) and if one or more Partner fail to perform their respective portions of the Contract(s), the same shall be deemed to be a default by all the Partners.

It is expressly understood that this Power of Attorney shall remain valid binding and irrevocable till completion of the Defect Liability Period in terms of the Contract.

The Joint Venture hereby agrees and undertakes to ratify and confirm all the whatsoever the said Attorney/Authorized Representatives/Partner in-charge quotes in the bid, negotiates and signs the Contract with the Employer and/or proposes to act on behalf of the Joint Venture by virtue of this Power of Attorney and the same shall bind the Joint Venture as if done by itself.

IN WITNESS THEREOF the Partners Constituting the Joint Venture as aforesaid have executed these presents on this..... day of under the Common Seal(s) of their Companies.

For and on behalf of the

Partners of Joint Venture

.....
.....

The Common Seal of the above Partners of the Joint Venture:

The Common Seal has been affixed there unto in the presence of:

WITNESS

1. Signature.....

Name

Designation

Occupation

2. Signature.....

Name

Designation

Occupation

Note: Bidder may use their own proforma for furnishing the Power of Attorney in support of person signing the in case of sole bidder.

FORM: FOR UNDERTAKING BY THE JOINT VENTURE PARTNERS (CONSORTIUM)

THIS JOINT DEED OF UNDERTAKING executed on this _____ day of _____ Two Thousand and _____ by _____ a company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the "Party No.1" which expression shall include its successors, executors and permitted assigns) and M/s _____ a company incorporated under the laws of _____ and having its Registered Office at _____ (Hereinafter called the "Party No.2" which expression shall include its successors, executors and permitted assigns) and M/s _____ a company incorporated under the laws of _____ and having its Registered Office at _____ (Hereinafter called the "Party No.3" which expression shall include its successors, executors and permitted assigns) for the purpose of making a bid and entering into a contract [hereinafter called the "Contract" (in case of award)] against the IFB No _____ for _____ (.) _____ associated with Nepal Electricity Authority, Hetauda Dhalkebar Inaruwa 400 kV Substation Expansion Project (hereinafter called the "Employer").

WHEREAS the Party No.1 and Party No.2 and Party No.3 have entered into an Agreement dated _____

AND WHEREAS the Employer invited bids as per the above mentioned Specification for the design, manufacture, supply, erection, testing and commissioning of Equipment/ Materials stipulated in the bidding documents under (insert name of the IFB alongwith project/employer name)

AND WHEREAS Clause 4.1, Section-ITB and 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria forming part of the bidding documents, inter-alia, stipulates that an Undertaking of two or more qualified partners, meeting the requirements of 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria, as applicable may bid, provided, the Joint Venture fulfills all other requirements under Clause 4.1 (a) and (b) of ITB and 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria and in such a case, the Letter of Bid (Bid Form) shall be signed by the Partner –In Charge so as to legally bind all the Partners of the Joint Venture, who will be jointly and severally liable to perform the Contract and all obligations hereunder.

The above clause further states that this Undertaking shall be attached to the bid and the Contract performance guarantee will be as per the format enclosed with the bidding document without any restrictions or liability for either party.

AND WHEREAS the bid is being submitted to the Employer vide proposal No.....dated..... by Party No.1 based on this Undertaking between all the parties; under these presents and the bid in accordance with the requirements of Clause 4.1, Section-ITB and 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria, has been signed by all the parties.

NOW THIS UNDERTAKING WITNESSETH AS UNDER:

In consideration of the above premises and agreements all the parties of this Deed of Undertaking do hereby declare and undertake:

1. In requirement of the award of the Contract by the Employer to the Joint Venture Partners, we, the Parties do hereby undertake that M/s..... the Party No.1, shall act as Lead Partner and further declare and confirm that we the parties to the Joint Venture shall jointly and severally be bound unto the Employer for the successful performance of the Contract and shall be fully responsible for the design, manufacture, Supply, and successful performance of the equipment in accordance with the Contract:
2. In case of any breach or default of the said Contract by any of the parties to the Joint Venture, the party (s) does hereby undertake to be fully responsible for the successful performance of the Contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.
3. Further, if the Employer suffers any loss or damage on account of any breach in the Contract or any shortfall in the performance of the equipment in meeting the performances guaranteed as per the specification in terms of the Contract, the Party(s) of these presents undertake to promptly make good such loss or damages caused to the Employer, on its demand without any demur. It shall not be necessary or obligatory for the Employer to proceed against Lead Partner to these presents before proceeding against or dealing with the other Party(s), the Employer can proceed against any of the parties who shall be jointly and severally liable for the performance and all other liabilities/obligations under the Contract to the Employer.
4. The financial liability of the Parties of this Deed of Undertaking to the Employer, with respect to any of the claims rising out of the performance or non-performance of the obligations set forth in this Deed of Undertaking, read in conjunction with the relevant conditions of the Contract shall, however not be limited in any way so as to restrict or limit the liabilities or obligations of any of the Parties of this Deed of Undertaking.
5. It is expressly understood and agreed between the Parties to this Undertaking that the responsibilities and obligations of each of the Parties shall be as delineated in **Appendix – I (to be suitably appended by the Parties along with this undertaking in its bid)**. It is further undertaken by the parties that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities of the Parties under the Contract.
6. It is also understood that this Undertaking is provided for the purposes of undertaking joint and several liabilities of the partners to the Joint Venture for submission of the bid and performance of the Contract if awarded and that this Undertaking shall not be deemed to give rise to any additional liabilities or obligations, in any manner or any law, on any of the Parties to this Undertaking or on the Joint Venture, other than the express provisions of the Contract.
7. This Undertaking shall be construed and interpreted in accordance with the provisions of the Contract.

8. In case of an award of a Contract, we the parties to this Deed of Undertaking do hereby agree that we shall be jointly and severally responsible for furnishing a Contract performance security from a bank in favour of the Employer in the currency/currencies of the Contract.
9. It is further agreed that this Deed of Undertaking shall be irrevocable and shall form an integral part of the bid and shall continue to be enforceable till the Employer discharges the same or upon the completion of the Contract in accordance with its provisions, whichever is earlier. It shall be effective from the date first mentioned above for all purposes and intents.

IN WITNESS WHEREOF, the Parties to this Deed of Undertaking have through their authorized representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

Common Seal of _____ (For party No 1)

Has been affixed in\our presence pursuant to Board of Director's Resolution

Dated _____

Name _____

Designation _____

for and on behalf of M/s _____

Signature _____

(Signature of the authorized representative)

WITNESS:

I.

II.

Common Seal of _____ (For party No 2)

Has been affixed in\our presence pursuant to Board of Director's Resolution

Dated _____

Name _____

Designation _____

for and on behalf of M/s _____

Signature _____

(Signature of the authorized representative)

WITNESS:

I.

II.

Common Seal of _____ (For party No 3)

Has been affixed in\our presence pursuant to Board of Director's Resolution

Dated _____

Name _____

Designation _____

for and on behalf of M/s _____

Signature _____

(Signature of the authorized representative)

WITNESS:

I.

II.

FORM: LETTER OF INTENT BY JV PARTNERS TO ENTER INTO JV AGREEMENT (CONSORTIUM)

THIS LETTER OF INTENT signed on this _____ day of _____ Two Thousand and _____ by _____ a company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the "Party No.1" which expression shall include its successors, executors and permitted assigns) and M/s _____ a company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the "Party No.2" which expression shall include its successors, executors and permitted assigns) and M/s _____ a company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the "Party No.3" which expression shall include its successors, executors and permitted assigns) for the purpose of making a bid and entering into a contract [hereinafter called the "Contract" {in case of award}] against the IFB No _____ for _____ (.) _____ associated with _____ of Nepal Electricity Authority, Hetauda Dhalkebar Inaruwa 400 kV Substation Expansion Project(hereinafter called the "Employer").

WHEREAS the Party No.1 and Party No.2 and Party No.3 intend to enter into a Joint Venture Agreement AND WHEREAS the Employer invited bids as per the above mentioned Specification for the design, manufacture, Supply of Equipment Materials stipulated in the bidding documents under _____ (.) _____ associated with _____.

AND WHEREAS Clause 4.1, Section-ITB and 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria forming part of the bidding documents, inter-alia, stipulates that two or more qualified partners, meeting the requirements of 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria, as applicable may bid, provided, they submit a Letter of Intent to enter into Joint Venture Agreement and the Joint Venture Partners fulfil all other requirements under Clause 4.1 (a) and (b) of ITB and 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria and in such a case, the Letter of Bid (Bid Form) shall be signed by all the proposed partners so as to legally bind all the Partners of the Joint Venture, who will be jointly and severally liable to perform the Contract by entering into Joint Venture Agreement as per proforma specified in this Section IV. Bidding Forms of the Bidding Documents which will be legally binding on all partners and all obligations hereunder.

The above clause further states that this Letter of Intent shall be attached to the bid and the Contract performance guarantee will be as per the format enclosed with the bidding document without any restrictions or liability for either party.

AND WHEREAS the bid is being submitted to the Employer vide proposal No _____ dated _____ by Party No.1 based on this Letter of Intent between all the parties; under these presents and the bid in accordance with the requirements of Clause 4.1, Section-ITB and 'Qualification Requirement of the Bidder', Section-Evaluation and Qualification Criteria, has been signed by all the parties.

NOW THIS UNDERTAKING WITNESSETH AS UNDER:

In consideration of the above premises and agreements all the parties of this Letter of Intent do hereby declare and undertake:

1. In requirement of the award of the Contract by the Employer to the Joint Venture Partners, we, the Parties do hereby undertake that M/s..... the Party No.1, shall act as Lead Partner and further declare and confirm that we the parties to the Joint Venture shall jointly and severally be bound unto the Employer for the successful performance of the Contract and shall be fully responsible for the design, manufacture, Supply, and successful performance of the equipment in accordance with the Contract for which we shall enter into Joint Venture Agreement as per performa specified in this Section IV. Bidding Forms of the Bidding Documents which will be legally binding on all partners:
2. If the Contract is awarded to Joint Venture then in case of any breach or default of the said Contract by any of the parties to the Joint Venture, the party(s) will be fully responsible for the successful performance of the Contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.
3. Further, if the Employer suffers any loss or damage on account of any breach in the Contract or any shortfall in the performance of the equipment in meeting the performances guaranteed as per the specification in terms of the Contract, the Party(s) of these presents will promptly make good such loss or damages caused to the Employer, on its demand without any demur. It shall not be necessary or obligatory for the Employer to proceed against Lead Partner to these presents before proceeding against or dealing with the other Party(s), the Employer can proceed against any of the parties who shall be jointly and severally liable for the performance and all other liabilities/obligations under the Contract to the Employer.
4. The financial liability of the Parties of the Deed of Undertaking to the Employer in the event of award of Contract on the Joint Venture, with respect to any of the claims rising out of the performance or non-performance of the obligations set forth in the Deed of Undertaking, read in conjunction with the relevant conditions of the Contract shall, however not be limited in any way so as to restrict or limit the liabilities or obligations of any of the Parties of the Deed of Undertaking.
5. It is expressly understood and agreed between the Parties to this Letter of Intent that the responsibilities and obligations of each of the Parties shall be as delineated in **Appendix – I (to be suitably appended by the Parties along with this Letter of Intent in its bid)**. It is further undertaken by the parties that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities of the Parties under the Contract in the event of award on Joint Venture.
6. It is also understood that this Letter of Intent is provided for the purposes of undertaking joint and several liabilities of the partners to the Joint Venture for submission of the bid and performance of the Contract if awarded and that this Letter of Intent shall not be deemed to give rise to any additional liabilities or obligations, in any manner or any law, on any of the Parties to this Letter of Intent or on the Joint Venture, other than the express provisions of the Contract.

7. This Letter of Intent shall be construed and interpreted in accordance with the provisions of the Contract.
8. In case of an award of a Contract, we the parties to this Letter of Intent do hereby agree that we shall enter into Joint Venture Agreement as per proforma specified in this Section IV. Bidding Forms of the Bidding Documents which will be legally binding on all partners and we shall be jointly and severally responsible for furnishing a Contract performance security from a bank in favour of the Employer in the currency/currencies of the Contract.
9. It is further agreed that this Letter of Intent shall be irrevocable and shall form an integral part of the bid. It shall be effective from the date first mentioned above for all purposes and intents.

IN WITNESS WHEREOF, the Parties to this Letter of Intent have through their authorized representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

Common Seal of _____ (For party No 1)
 Has been affixed in\our presence pursuant to Board of Director's Resolution
 Dated _____
 Name _____
 Designation _____ for and on behalf of M/s _____
 Signature _____ (Signature of the authorized representative)

WITNESS:

I.
 II.
 Common Seal of _____ (For party No 2)
 Has been affixed in\our presence pursuant to Board of Director's Resolution
 Dated _____
 Name _____
 Designation _____ for and on behalf of M/s _____
 Signature _____ (Signature of the authorized representative)

WITNESS:

I.
 II.
 Common Seal of _____ (For party No 3)
 Has been affixed in\our presence pursuant to Board of Director's Resolution
 Dated _____
 Name _____
 Designation _____ for and on behalf of M/s _____
 Signature _____ (Signature of the authorized representative)

WITNESS:

I.
 II.

APPENDIX-I to the FORM OF JV AGREEMENT

SN	Description	Lead Partner in JV	Other partner in JV
1	Share Percentage in JV		
2	Roles and Responsibilities

Section 5 - Eligible Countries

All Countries are eligible unless otherwise restriction by the Government of Nepal (GoN)

Section 6 - Employer's Requirements

Table of Contents

1	Scope of Supply of Plant and Services	6-2
2.	Specifications.....	6-3
3.	Drawings.....	6-4
4.	Supplementary Information.....	6-5
5.	Certificates	6-6
	5.1 Form of Completion Certificate	6-7
	5.2 Form of Operational Acceptance Certificate	6-8
6.	Change Orders	6-9
6.1.	Change Order Procedure.....	6-10
	6.1.1 General	6-10
	6.1.2 Change Order Log	6-10
	6.1.3 References for Changes.....	6-10
6.2	Change Order Forms	6-11
	6.2.1 Request for Change Proposal Form	6-11
	6.2.2 Estimate for Change Proposal Form	6-12
	6.2.3 Acceptance of Estimate Form	6-13
	6.2.4 Change Proposal Form	6-14
	6.2.5 Change Order Form	6-16
	6.2.6 Pending Agreement Change Order Form	6-17
	6.2.7 Application for Change Proposal Form	6-18

1. Scope of Supply of Plant and Services

(Provided in Volume II)

2. Specifications

(Provided in Volume II)

3. Drawings

(Provided in Volume II)

4. Supplementary Information

(Provided in Volume II)

5. Certificates

5.1 Form of Completion Certificate

Contract: [. . . .insert name of contract and contract identification details. . . .]

Date:

Certificate No.:

To: [. . . .insert name and address of contractor. . . .]

Dear Ladies and/or Gentlemen,

Pursuant to GCC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated [. . . .insert date. . . .], relating to the [. . . .brief description of the Facilities], we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: [. . . .description]
2. Date of Completion: [. . . .date]

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

[. . . .Signature]

Project Manager

5.2 Form of Operational Acceptance Certificate

Contract: [. . . .insert name of contract and contract identification details. . . .]

Date:

Certificate No.:

To: [. . . .insert name and address of contractor. . . .]

Pursuant to GCC Subclause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated [. . .date. . .], relating to the [. . .brief description of the facilities. . .], we hereby notify you that the Functional Guarantees of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: [. . .description . . .]
2. Date of Operational Acceptance: [. . .date . . .]

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

[. . . .Signature]

Project Manager

6. Change Orders

6.1 Change Order Procedure

- 6.1.1 General
- 6.1.2 Change Order Log
- 6.1.3 References for Changes

6.2. Change Order Forms

- 6.2.1 Request for Change Proposal
- 6.2.2 Estimate for Change Proposal
- 6.2.3 Acceptance of Estimate
- 6.2.4 Change Proposal
- 6.2.5 Change Order
- 6.2.6 Pending Agreement Change Order
- 6.2.7 Application for Change Proposal

6.1. Change Order Procedure

6.1.1 General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GCC Clause 39 (Change in the Facilities) of the General Conditions.

6.1.2 Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Employer.

6.1.3 References for Changes

- (1) Request for Change as referred to in GCC Clause 39 shall be serially numbered CR-X-nnn.
- (2) Estimate for Change Proposal as referred to in GCC Clause 39 shall be serially numbered CN-X-nnn.
- (3) Acceptance of Estimate as referred to in GCC Clause 39 shall be serially numbered CA-X-nnn.
- (4) Change Proposal as referred to in GCC Clause 39 shall be serially numbered CP-X-nnn.
- (5) Change Order as referred to in GCC Clause 39 shall be serially numbered CO-X-nnn.

Note:

- (a) Requests for Change issued from the Employer's Home Office and the Site representatives of the Employer shall have the following respective references:

Home Office	CR-H-nnn
Site	CR-S-nnn

- (b) The above number "nnn" is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

6.2 Change Order Forms

6.2.1 Request for Change Proposal Form

[*Employer's letterhead*]

To: [*Contractor's name and address*]

Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*]

Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within [*number*] days of the date of this letter [or on or before (*date*)].

1. Title of Change: [*Title*]
2. Change Request No./Rev.: [*Number*]
3. Originator of Change:
 Employer: [Name]
 Contractor (by Application for Change Proposal No. [Number Refer to Annex 6.2.7])
4. Brief Description of Change: [*Description*]
5. Facilities and/or Item No. of equipment related to the requested Change: [*Description*]
6. Reference drawings and/or technical documents for the request of Change:
 Drawing No./Document No. *Description*
7. Detailed conditions or special requirements on the requested Change: [*Description*]
8. General Terms and Conditions:
 - (a) Please submit your estimate showing what effect the requested Change will have on the Contract Price.
 - (b) Your estimate shall include your claim for the additional time, if any, for completing the requested Change.
 - (c) If you have any opinion that is critical to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us in your proposal of revised provisions.
 - (d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
 - (e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

[*Employer's name*]

[*Signature*]

[*Name of signatory*]

[*Title of signatory*]

6.2.2 Estimate for Change Proposal Form

[Contractor's letterhead]

To: [Employer's name and address]

Date:

Attention: [Name and title]

Contract Name: [Contract name]

Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost to prepare the below-referenced Change Proposal in accordance with GCC Subclause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Subclause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: [Title]
2. Change Request No./Rev.: [Number]
3. Brief Description of Change: [Description]
4. Scheduled Impact of Change: [Description]
5. Cost for Preparation of Change Proposal: [insert costs, which shall be in the currencies of the contract]

(a)	Engineering	(Amount)
(i)	Engineer _____ hours (hrs) x _____ rate/hr =	_____
(ii)	Draftsperson _____ hrs x _____ rate/hr =	_____
	Sub-total _____ hrs	_____
	Total Engineering Cost	_____
(b)	Other Cost	_____
	Total Cost (a) + (b)	_____

[Contractor's name]

[Signature]

[Name of signatory]

[Title of signatory]

6.2.3 Acceptance of Estimate Form

[*Employer's letterhead*]

To: [*Contractor's name and address*]

Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*]

Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: [*Title*]
2. Change Request No./Rev.: [*Request number/revision*]
3. Estimate for Change Proposal No./Rev.: [*Proposal number/revision*]
4. Acceptance of Estimate No./Rev.: [*Estimate number/revision*]
5. Brief Description of Change: [*Description*]
6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparing the Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GCC Clause 39 of the General Conditions.

[*Employer's name*]

[*Signature*]

[*Name of signatory*]

[*Title of signatory*]

6.2.4 Change Proposal Form

[Contractor's letterhead]

To: [Employer's name and address]

Date:

Attention: [Name and title]

Contract Name: [Contract name]

Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. [Number], we hereby submit our proposal as follows:

1. Title of Change: [Name]
2. Change Proposal No./Rev.: [Proposal number / revision]
3. Originator of Change: Employer: [Name] / Contractor: [Name]
4. Brief Description of Change: [Description]
5. Reasons for Change: [Reason]
6. Facilities and/or Item No. of Equipment related to the requested Change: [Facilities]
7. Reference drawings and/or technical documents for the requested Change:
[Drawing/Document No./Description]
8. Estimate of increase/decrease to the Contract Price resulting from the Change Proposal:

Amount

[insert amounts in the currencies of the Contract]

(a) Direct material					
(b) Major construction equipment					
(c) Direct field labor (Total hrs)					
(d) Subcontracts					
(e) Indirect material and labor					
(f) Site supervision					
(g) Head office technical staff salaries					
Process engineer	_____	hrs @	_____	rate/hr	_____
Project engineer	_____	hrs @	_____	rate/hr	_____
Equipment engineer	_____	hrs @	_____	rate/hr	_____
Procurement	_____	hrs @	_____	rate/hr	_____
Draftsperson	_____	hrs @	_____	rate/hr	_____
Total	_____	hrs			

- (h) Extraordinary costs (computer, travel, etc.) _____
- (i) Fee for general administration, % of Items _____
- (j) Taxes and customs duties _____
- Total lump sum cost of Change Proposal [*Sum of items (a) to (j)*]
- Cost to prepare Estimate for Change Proposal [*Amount payable if Change is not accepted*]

9. Additional time for Completion required due to Change Proposal
10. Effect on the Functional Guarantees
11. Effect on the other terms and conditions of the Contract
12. Validity of this Proposal: within [Number] days after receipt of this Proposal by the Employer
13. Other terms and conditions of this Change Proposal:
- (a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within [Number] days from your receipt of this Proposal.
- (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.
- (c) Contractor's cost for preparation of this Change Proposal: [*...insert amount. This cost shall be reimbursed by the employer in case of employer's withdrawal or rejection of this Change Proposal without default of the contractor in accordance with GCC Clause 39 of the General Conditions*]

[*Contractor's name*]

[*Signature*]

[*Name of signatory*]

[*Title of signatory*]

6.2.5 Change Order Form

[Employer's letterhead]

To: [Contractor's name and address]

Date:

Attention: [Name and title]

Contract Name: [*Contract name*]

Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. [*number*]), and agree to adjust the Contract Price, Time for Completion, and/or other conditions of the Contract in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: [*Name*]
2. Change Request No./Rev.: [*Request number / revision*]
3. Change Order No./Rev.: [*Order number / revision*]
4. Originator of Change: Employer: [*Name*] / Contractor: [*Name*]
5. Authorized Price:
Ref. No.: [*Number*] Date: [*Date*]
Foreign currency portion [*Amount*] plus Local currency portion [*Amount*]
6. Adjustment of Time for Completion
None Increase [*Number*] days Decrease [*Number*] days
7. Other effects, if any

Authorized by: _____
Employer

Date: _____

Accepted by: _____
Contractor

Date:

6.2.6 Pending Agreement Change Order Form

[*Employer's letterhead*]

To: [*Contractor's name and address*]

Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*]

Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: [*Name*]
2. Employer's Request for Change Proposal No./Rev.: [*number/revision*] dated: [*date*]
3. Contractor's Change Proposal No./Rev.: [*number / revision*] dated: [*date*]
4. Brief Description of Change: [*Description*]
5. Facilities and/or Item No. of equipment related to the requested Change: [*Facilities*]
6. Reference Drawings and/or technical documents for the requested Change:
[*Drawing / Document No. / Description*]
7. Adjustment of Time for Completion:
8. Other change in the Contract terms:
9. Other terms and conditions:

[*Employer's name*]

[*Signature*]

[*Name of signatory*]

[*Title of signatory*]

6.2.7 Application for Change Proposal Form

[*Contractor's letterhead*]

To: [*Employer's name and address*]

Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*]

Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

We hereby propose that the work mentioned below be treated as a Change in the Facilities.

1. Title of Change: [*Name*]
2. Application for Change Proposal No./Rev.: [*Number / revision*] dated: [*Date*]
3. Brief Description of Change: [*Description*]
4. Reasons for Change:
5. Order of Magnitude Estimation (amount in the currencies of the Contract): [*Amount*]
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:
8. Appendix:

[*Contractor's name*]

[*Signature*]

[*Name of signatory*]

[*Title of signatory*]

Section 7 - General Conditions of Contract

The GCC in this section, read in conjunction with the Special Conditions of Contract in Section 8 and other documents listed therein, should be a complete document expressing all the rights and obligations of the contracting parties. The General Conditions herein shall not be altered.

Table of Contents

A. Contract and Interpretation.....	7-3
1. Definitions.....	7-3
2. Contract Documents.....	7-5
3. Interpretation	7-5
4. Communications.....	7-7
5. Law and Language.....	7-7
6. Fraud and Corruption	7-7
B. Subject Matter of Contract	7-8
7. Scope of Facilities	7-8
8. Time for Commencement and Completion	7-9
9. Contractor's Responsibilities	7-9
10. Employer's Responsibilities.....	7-10
C. Payment	7-11
11. Contract Price.....	7-11
12. Terms of Payment	7-12
13. Securities.....	7-12
14. Taxes and Duties.....	7-13
D. Intellectual Property	7-14
15. License/Use of Technical Information	7-14
16. Confidential Information	7-14
E. Execution of the Facilities.....	7-15
17. Representatives.....	7-15
18. Work Program	7-17
19. Subcontracting.....	7-18
20. Design and Engineering	7-18
21. Procurement	7-20
22. Installation	7-22
23. Test and Inspection	7-27
24. Completion of the Facilities	7-29
25. Commissioning and Operational Acceptance.....	7-30
F. Guarantees and Liabilities.....	7-33
26. Completion Time Guarantee	7-33
27. Defect Liability	7-34
28. Functional Guarantees	7-36

29. Patent Indemnity	7-36
30. Limitation of Liability.....	7-37
G. Risk Distribution	7-38
31. Transfer of Ownership	7-38
32. Care of Facilities	7-38
33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification	7-39
34. Insurance	7-40
35. Unforeseen Conditions	7-42
36. Change in Laws and Regulations	7-43
37. Force Majeure	7-43
38. War Risks.....	7-45
H. Change in Contract Elements	7-46
39. Change in the Facilities.....	7-46
40. Extension of Time for Completion.....	7-49
41. Suspension	7-50
42. Termination	7-51
43. Assignment	7-52
I. Claims, Disputes and Arbitration	7-53
44. Contractor's Claims.....	7-53
45. Disputes and Arbitration	7-54

General Conditions of Contract

A. Contract and Interpretation

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned them:

“Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.

“Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).

“GCC” means the General Conditions of Contract.

“SCC” means the Special Conditions of Contract.

“day” means calendar day.

“year” means 365 days.

“month” means calendar month.

“Party” means the Employer or the Contractor, as the context requires.

“Employer” means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.

“Project Manager” means the person appointed by the Employer in the manner provided in GCC Subclause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer.

“Contractor” means the person(s) named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

“Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Subclause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

“Construction Manager” means the person appointed by the Contractor’s Representative in the manner provided in GCC Subclause 17.2.4.

“Subcontractor,” including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

“Dispute Board” means the person or persons named as such in the SCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GCC Subclause 45.1 (Dispute Board) hereof.

“The Bank” means the financing institution named in the SCC.

“Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Facilities” means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.

“Plant” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Subclause 7.3 hereof), but does not include Contractor’s Equipment.

“Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.

“Contractor’s Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances, or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

“Country of Origin” means the countries and territories eligible under the rules of the Bank as further elaborated in the SCC.

“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.

“Effective Date” means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, upon which the period until the Time for Completion shall be counted from.

“Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause 8 and in accordance with the relevant provisions of the Contract.

“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

“Precommissioning” means the testing, checking and other requirements specified in the Employer’s Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.

“Commissioning” means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Subclause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

“Guarantee Test(s)” means the test(s) specified in the Employer’s Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement in accordance with the provisions of GCC Subclause 25.2 (Guarantee Test) hereof.

“Operational Acceptance” means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor’s fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

“Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.

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|------------------------------|--|
| 2. Contract Documents | 2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole. |
| 3. Interpretation | 3.1 In the Contract, except where the context requires otherwise, <ul style="list-style-type: none"> (a) words indicating one gender include all genders; (b) words indicating the singular also include the plural and words indicating the plural also include the singular; (c) provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be record in writing; |

- (d) the word “tender” is synonymous with “bid,” “tenderer” with “Bidder,” and “tender documents” with “Bidding Documents;” and
- (e) “written” or “in writing” means handwritten, typewritten, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

“Incoterms” means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1^{er}, 75008 Paris, France.

3.3 Entire Agreement

Subject to GCC Subclause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.4 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Employer.

3.6 Non-Waiver

3.6.1 Subject to GCC Subclause 3.6.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.6.2 Any waiver of a party’s rights, powers, or remedies under the

Contract must be in writing, must be dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.7 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.8 Country of Origin

"Origin" means the place where the plant and component parts thereof are mined, grown, produced, or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

4. Communications

4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests, and discharges, these communications shall be

- (a) in writing and delivered against receipt; and
- (b) delivered, sent, or transmitted to the address for the recipient's communications as stated in the Contract Agreement.

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

5. Law and Language

5.1 The Contract shall be governed by and interpreted in accordance with laws of the country specified in the SCC.

5.2 The ruling language of the Contract shall be that stated in the SCC.

5.3 The language for communications shall be the ruling language unless otherwise stated in the SCC.

6. Fraud and Corruption

6.1 If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub-consultants, services providers, suppliers and/or their employees 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 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 42 shall apply as if such expulsion had been made under Sub-Clause 42.2.1 (c).

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” 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” 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 a GoN 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 GoN's inspection and audit rights provided for under Sub-Clause 9.6.

B. Subject Matter of Contract

7. Scope of Facilities

- 7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, pre-commissioning and delivery) of the Plant and the installation, completion, and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes, and any other documents as specified in the section Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Subclause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures, and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works, and services that will be provided or performed by the Employer, as set forth in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.
- 7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably

inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

- 7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the SCC and the provisions, if any, specified in the SCC. However, the identity, specifications, and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

8. Time for Commencement and Completion

- 8.1 The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to GCC Subclause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix 4 (Time Schedule) to the Contract Agreement.
- 8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

9. Contractor's Responsibilities

- 9.1 The Contractor shall design, manufacture, including associated purchases and/or subcontracting, install, and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities, including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date 30 days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
- 9.3 The Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under GCC Subclause 10.3 hereof and that are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local,

state, national, or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Subclause 10.1 hereof.

- 9.5 Any plant and services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any Subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).
- 9.6 The Contractor shall permit GON/DP to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by GON/DP, if so required by GON/DP.
- 9.7 If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.
- 9.8 Protection of the Environment
 - (a) The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.
 - (b) The Contractor shall ensure that emissions, surface discharges, and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

10. Employer's Responsibilities

- 10.1 All information and/or data to be supplied by the Employer as described in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement shall be deemed to be accurate, except when the Employer expressly states otherwise.
- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
- 10.3 The Employer shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities, or

public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.

- 10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities, or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning, and Guarantee Tests, all in accordance with the provisions of the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Subclause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Subclause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Subclause 25.2.
- 10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, except those incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Subclause 25.2.
- 10.8 In the event that the Employer shall be in breach of any of his obligations imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

C. Payment

11. Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 11.2 Unless an adjustment clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in

the event of a Change in the Facilities or as otherwise provided in the Contract.

- 11.3 Subject to GCC Subclauses 9.2, 10.1, and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

- 12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
- 12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix (Terms and Procedures of Payment) to the Contract Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.
- 12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

13. Securities

- 13.1 Issuance of Securities
The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner, and form specified below.
- 13.2 Advance Payment Security
- 13.2.1 The Contractor shall, within 30 days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies.
- 13.2.2 The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.
- 13.3 Performance Security
- 13.3.1 The Contractor shall, within 30 days of the notification of

contract award, provide a security for the due performance of the Contract in the amount specified in the SCC.

13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms of bank guarantees provided in the Bidding Documents, as stipulated by the Employer in the SCC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the SCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, 540 days after Completion of the Facilities or 365 days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Subclause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Subclause 27.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period and up to the amount specified in the SCC.

14. Taxes and Duties

14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies, and charges assessed on the Contractor, its Subcontractors, or their employees by all municipal, state, or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2 Notwithstanding GCC Subclause 14.1 above, the Employer shall bear and promptly pay all customs and import duties as well as other local taxes like, e.g., a value-added tax (VAT), imposed by the law of the country where the Site is located on the Plant specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.

14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date 30 days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Subclause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment of the Contract

Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

D. Intellectual Property

15. License/Use of Technical Information

- 15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and nontransferable license (without the right to sublicense) to the Employer under the patents, utility models, or other industrial property rights owned by the Contractor or by a third party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a nonexclusive and nontransferable right (without the right to sublicense) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how, or other intellectual property right from the Contractor or any third party to the Employer.
- 15.2 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

16. Confidential Information

- 16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.
- 16.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, procurement of Plant, construction, or such other work and services as are required for the performance of the Contract.
- 16.3 The obligation of a party under GCC Subclauses 16.1 and 16.2 above, however, shall not apply to that information, which
- (a) now or hereafter enters the public domain through no fault of that

party;

- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and
- (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

17. Representatives 17.1 Project Manager

If the Project Manager is not named in the Contract, then within 14 days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals, and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information, and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative and Construction Manager

17.2.1 If the Contractor's Representative is not named in the Contract, then within 14 days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within 14 days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within 14 days giving the reason therefor, then the Contractor shall appoint a replacement within 14 days of such objection, and the foregoing provisions of this GCC Subclause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's

notices, instructions, information, and all other communications under the Contract.

All notices, instructions, information, and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Subclause 17.2.1.

- 17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Subclause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

- 17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick, or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, the Contractor's Representative or the Construction Manager shall appoint a suitable person to act as the Construction Manager's deputy.

- 17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Subclause 22.4. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

- 17.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Subclause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

18. Work Program**18.1 Contractor's Organization**

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within 21 days of the Effective Date. The chart shall include the identities of the key personnel, and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within 30 days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install, and pre-commission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning, and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Subclause 18.2 above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Subclause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Subclause 8.2, any extension thereof entitled under GCC Subclause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and

Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

- 19.Subcontracting**
- 19.1 The Appendix 5 (List of Major Items of Plant and Services and List of Approved Subcontractors) to the Contract Agreement specifies major items of plant and services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract.
- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Subclause 19.1.
- 19.3 For items or parts of the Facilities not specified in the Appendix (List of Major Items of Plant and Services and List of Approved Subcontractors for Major Items) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.
- 19.4 Each subcontract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.
- 19.5 If a Sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.
- 20. Design and Engineering**
- 20.1 Specifications and Drawings
- 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.
- The Contractor shall be responsible for any discrepancies, errors, or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.
- 20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the

Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date 30 days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and in accordance with the requirements of GCC Subclause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Subclauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within 14 days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Subclause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said 14 days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. If the Project Manager disapproves a document, he shall specify the reasons for his decision.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Subclause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the

parties within a reasonable period, then such dispute or difference may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3 hereof. If such dispute or difference is referred to an Dispute Board, the Project Manager shall give instructions as to whether and, if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under Subclause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Subclause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

21. Procurement

21.1 Materials

Subject to GCC Subclause 14.2, the Contractor shall procure and transport all materials in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Materials

If the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Subclause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect, or default. The Employer shall immediately remedy any shortage, defect, or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect, or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody, and control of the Contractor. The provision of

this GCC Subclause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

- 21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody, and control shall not relieve the Employer of liability for any undetected shortage, defect, or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

21.3 Transportation

- 21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

- 21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

- 21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile, or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

- 21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges, or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Subclause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

22. Installation**22.1 Setting Out/Supervision****22.1.1 Benchmark**

- (a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks, and lines provided to it in writing by or on behalf of the Employer.
- (b) If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level, or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision

The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2 Labor**22.2.1 Engagement of Staff and Labor**

- (a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding, and transport.
- (b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled, and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.
- (c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.
- (d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the

place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer's Personnel.

22.2.3 Labor Laws

- (a) The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration, and emigration, and shall allow them all their legal rights.
- (b) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous, or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.
- (c) The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious, or other customs and all local laws and regulations pertaining to the employment of labor.

22.2.4 Rates of Wages and Conditions of Labor

- (a) The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- (b) The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

22.2.5 Working Hours

- (a) No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the SCC, unless

- (i) otherwise stated in the Contract;
 - (ii) the Project Manager gives consent; or
 - (iii) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.
- (b) If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.
- (c) This Subclause shall not apply to any work which is customarily carried out by rotary or double shifts.

22.2.6 Facilities for Staff and Labor

- (a) Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.
- (b) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

22.2.7 Health and Safety

- (a) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay, and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- (b) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- (c) The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to property, as the Project Manager may reasonably require.

22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise specified in the SCC.

22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, gender, hours worked, and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

22.2.10 Supply of Foodstuff

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter, or disposal by Contractor's Personnel.

22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.2.15 Prohibition of All Forms of Forced or Compulsory Labor

The contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

22.2.16 Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social

development.

22.3 Contractor's Equipment

- 22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.
- 22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.
- 22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.5 Opportunities for Other Contractors

- 22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.
- 22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.
- 22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the

resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

- 22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other Contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store, or remove any surplus materials, clear away any wreckage, rubbish, or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion

After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish, and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

23. Test and

- 23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the

Inspection

Plant and any part of the Facilities as are specified in the Contract.

- 23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.
- 23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.
- If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.
- 23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- 23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Subclause 23.3.
- 23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3.
- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.
- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by

the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Subclause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Subclause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion of the Facilities

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within 7 days after receipt of the notice from the Contractor under GCC Subclause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement for Pre-commissioning of the Facilities or any part thereof.

Pursuant to the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said 7-day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters required for Pre-commissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters have been provided by the Employer in accordance with GCC Subclause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Subclause 25.5.

24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

- 24.5 The Project Manager shall, within 14 days after receipt of the Contractor's notice under GCC Subclause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Subclause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Subclause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within 7 days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within 7 days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

- 24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within 14 days after receipt of the Contractor's notice under GCC Subclause 24.4 or within 7 days after receipt of the Contractor's repeated notice under GCC Subclause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

- 24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

- 24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Subclause 24.5, or immediately after the date of the deemed Completion, under GCC Subclause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters required for

Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Guarantee Test

25.2.1 Subject to GCC Subclause 25.5, the Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Subclauses 28.2 and 28.3 shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GCC Subclause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the SCC, or any other agreed upon period as specified in GCC Subclause 25.2.2 above; or
- (c) the Contractor has paid the liquidated damages specified in GCC Subclause 28.3 hereof; and
- (d) any minor items mentioned in GCC Subclause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Subclause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Employer's Requirements (Forms and Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer,

and within 7 days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within 7 days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

25.5 Delayed Pre-Commissioning and/or Guarantee Test

25.5.1 In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities pursuant to Subclause 24.3, or with the Guarantee Test pursuant to Subclause 25.2, for reasons attributable to the Employer either on account of non availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Employer's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Subclause 24.6, and Operational Acceptance, pursuant to GCC Subclause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Subclause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Subclause 25.5.1, the Contractor shall be entitled to the following:

- (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Subclause 26.2;
- (b) payments due to the Contractor in accordance with the provision specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement,

which would not have been payable in normal circumstances due to noncompletion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Subclause 25.5.3 below;

- (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;
- (d) the additional charges towards the care of the Facilities pursuant to GCC Subclause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Subclause 25.5.4 below. The provision of GCC Subclause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Subclause 25.5.1 actually exceeds 180 days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing all the specified activities and obligations under the contract.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the SCC pursuant to GCC Subclause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount specified in the SCC as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

Such payment shall completely satisfy the Contractor's obligation to

attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GCC Subclause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Subclause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

- 26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor a bonus in the amount specified in the SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the SCC.

27. Defect Liability

- 27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials, and workmanship of the Plant supplied and of the work executed.
- 27.2 The Defect Liability Period shall be 540 days from the date of Completion of the Facilities (or any part thereof) or 1 year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC Subclause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials, and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace, or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Employer,
 - (b) operation of the Facilities outside specifications provided in the Contract, or
 - (c) normal wear and tear.
- 27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to:
- (a) any materials that are supplied by the Employer under GCC

Subclause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;

- (b) any designs, specifications or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Subclause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than 15 days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or

any part thereof, the Plant, design, or engineering, or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal, or willful action of the Contractor.

27.10 In addition, any such component of the Facilities and during the period of time as may be specified in the SCC shall be subject to an extended Defect Liability Period. Such obligation of the Contractor shall be in addition to the Defect Liability Period specified under GCC Subclause 27.2.

28. Functional Guarantees

28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement, subject to, and upon the conditions therein specified.

28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications, and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications, and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either

- (a) make such changes, modifications, and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or
- (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix (Functional Guarantees) to the Contract Agreement.

28.4 The payment of liquidated damages under GCC Subclause 28.3, up to the limitation of liability specified in the Appendix (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC Subclause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent

29.1 The Contractor shall, subject to the Employer's compliance with GCC

Indemnity

Subclause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located, and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract Agreement.

- 29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Subclause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within 30 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 30-day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the

Employer, and

- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed a multiple of the Contract Price specified in the SCC or, if a multiple is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

G. Risk Distribution

31. Transfer of Ownership

- 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.
- 31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

- 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Subclauses 32.2 and 38.1.
- 32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of

- (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or
- (b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or
- (c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed, or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed, or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Subclause 42.1 hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Subclause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Subclauses 32.2 (b) and (c) and 38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Subclause 38.1, the provisions of GCC Subclause 38.3 shall apply.

**33. Loss of or
Damage to
Property;
Accident or Injury
to Workers;
Indemnification**

33.1 Subject to GCC Subclause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or

their employees, officers, or agents, except any injury, death, or property damage caused by the negligence of the Employer, its contractors, employees, officers, or agents.

- 33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Subclause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within 30 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 30-day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion, or other perils were not caused by any act or failure of the Contractor.
- 33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

- 34.1 To the extent specified in the Appendix (Insurance Requirements) to the Contract Agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period

while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the Appendix (Insurance Requirements) to the Contract Agreement.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1, except for the Third Party Liability, Workers' Compensation, and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation, and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

34.3 The Contractor shall, in accordance with the provisions of the Appendix (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

34.5 The Employer shall at its expense take out and maintain in effect

during the performance of the Contract those insurances specified in the Appendix (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Subclause 34.5.

- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Subclause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.
- 34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

- 35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional

time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
- (b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
- (c) the extent of the anticipated delay; and
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Subclause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Subclause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Subclause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

36. Change in Laws and Regulations

36.1 If, after the date 30 days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed, which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC, pursuant to GCC Subclause 11.2.

37. Force Majeure

37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

- (a) war, hostilities, or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear, and pressure waves or other natural or physical disaster; and
- (f) shortage of labor, materials, or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 14 days after the occurrence of such event.

37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Subclauses 37.6 and 38.5.

37.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall

- (a) constitute a default or breach of the Contract; or
- (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Subclauses 32.2, 38.3 and 38.4

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than 60 days or an aggregate

period of more than 120 days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Subclause 38.5.

37.7 In the event of termination pursuant to GCC Subclause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Subclauses 42.1.2 and 42.1.3.

37.8 Notwithstanding GCC Subclause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Subclause 37.1 and any explosion or impact of any mine, bomb, shell, grenade, or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

- (a) destruction of or damage to Facilities, Plant, or any part thereof;
- (b) destruction of or damage to property of the Employer or any third party; or
- (c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any war risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges, or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any war risks, the Employer shall pay the Contractor for

- (a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Facilities;
- (b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged; and
- (c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction, or damage affects a substantial part of the Facilities, shall terminate the Contract,

pursuant to GCC Subclause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

- 38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any war risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.
- 38.5 If during the performance of the Contract any war risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any war risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.
- 38.6 In the event of termination pursuant to GCC Subclauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Subclauses 42.1.2 and 42.1.3.

H. Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

- 39.1.1 Subject to GCC Subclauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in or from the Facilities hereinafter called "Change," provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.
- 39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency, or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GCC Subclauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Subclauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Subclause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (a) brief description of the Change,
- (b) effect on the Time for Completion,
- (c) estimated cost of the Change,
- (d) effect on Functional Guarantees (if any),
- (e) effect on the Facilities, and
- (f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

- (a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GCC Subclause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Subclause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the

Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

- 39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than 15%, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

- 39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within 14 days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within 14 days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of 14 days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Subclause 39.2.2.

- 39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within 60 days from the

date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Subclause 45.3.

39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GCC Subclause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Subclause 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Subclauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GCC Clause 39;
- (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Subclause 32.2;
- (c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Subclause 41.2; or
- (d) any changes in laws and regulations as provided in GCC Clause 36; or
- (e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or
- (f) any other matter specifically mentioned in the Contract; or
- (g) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this Subclause

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor

shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Subclause 45.3.

- 40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions, which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

- 41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within 30 days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Subclause 42.1.

- 41.2 If
- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated

in GCC Subclause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Subclause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by 14 days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended, or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Subclause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 In no case, the contractor shall terminate the contract unilaterally, without duly notifying the Employer.

42.2 The Employer may terminate the Contract at any time if the contractor :

- a) does not commence the work as per the Contract,
- b) abandons the work without completing,
- c) fails to achieve progress as per the Contract.

42.3 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

42.4 Fundamental breaches of Contract shall include, but shall not be limited to, the following :

- a) The Contractor uses the advance payment for matters other than the contractual obligations,
- b) 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;

- c) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
- d) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.
- e) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 90 days of the date of the Project Manager's certificate;
- f) 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;
- g) the Contractor does not maintain a Security, which is required; and
- h) 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.
- i) 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 6.1.

42.5 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 42.2 above, the Project Manager shall decide whether the breach is fundamental or not.

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

42.7 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.

42.8 Payment upon Termination

If the Contract is terminated because of fundamental breach of Contract or for any other fault by the Contractor, the performance security shall be forfeited by the Employer. In such case, amount to complete the remaining works as per the Contract shall be recovered from the Contractor as Government dues.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or

by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Claims, Disputes, and Arbitration

44. Contractor's Claims

- 44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Subclause shall apply.

The Contractor shall also submit any other notices, which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Subclause, monitor the record keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim, which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect,

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- (c) the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor

and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Subclause are in addition to those of any other Subclause, which may apply to a claim. If the Contractor fails to comply with this or another Subclause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Subclause.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either party may refer the matter to the Dispute and Arbitration pursuant to GCC 45 hereof.

45. Disputes and Arbitration

- 45.1 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.
- 45.2 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 Arbitration within 30 days after the expiration of amicable settlement period.
- 45.3 In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures published by the Nepal Council of Arbitration (NEPCA) at the place given in the SCC.

Section 8 - Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

General Conditions	Ref. GCC	Special Conditions of Contract (SCC)
Definitions	1.0	<p>The Employer is: Hetauda-Dhalkebar-Inaruwa 400kV Substation Expansion Project Transmission Directorate Nepal Electricity Authority Kharipati, Bhaktapur, Nepal Telephone: +977 1 6620018 Electronic mail address: hdi400kvss@ nea.org.np</p> <p>The Project Manager is: Project Manager Hetauda-Dhalkebar-Inaruwa 400kV Substation Expansion Project Transmission Directorate Nepal Electricity Authority Kharipati, Bhaktapur, Nepal Telephone: +977 1 6620018 Electronic mail address: hdi400kvss@nea.org.np</p> <p>The Contractor is: [to be inserted] The Contractor's representative is: [to be inserted]</p> <p>Country of Origin: all countries and territories as indicated in Section 5 of the bidding documents, Eligible Countries.</p>
Law and Language	5.0	<p>5.1 The Contract shall be interpreted in accordance with the laws of: Nepal</p> <p>5.2 The ruling language is: English</p> <p>5.3 The language for communications is: English</p>
Scope of Facilities	7.3	<p>The Contractor shall ensure the availability of spare parts for the supplied items for a minimum period of five (05) years from the operational acceptance by the Employer.</p> <p>The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.</p>
Time for Commencement and Completion	8.0	<p>8.1 The Contractor shall commence work on the Facilities within Seven (7) days from the Effective Date for determining Time of Completion as specified in the Contract Agreement.</p> <p>8.2 The Time for Completion of the whole of the Facilities shall be Eighteen (18) months from the Effective Date as described in the Contract Agreement.</p>
Contractor's Responsibilities	9.0	<p>Add the following new Sub-Clauses: GCC 9.9-- Existing Fences Where it is necessary to operate equipment through existing fences, the Contractor shall install suitable temporary gates. The temporary gates shall be constructed of materials and to standards equal to those of the existing fence. Before cutting the fences for</p>

	<p>the installation of temporary gates, the Contractor shall install adequate braces and additional posts, if necessary, on each side of the opening and shall fully anchor the fence so that all wires will maintain their original tension after opening is cut. Except when equipment is passing, such gates shall be kept closed. After completion of the work, the fence shall be restored as nearly as practicable to its original condition. Deviation from the above requirement will be permitted only where the Contractor furnishes advanced written approval from the landowner or landowners for a different method of operation.</p> <p>Where it is necessary for the Contractor to remove or to alter portions of existing fences to permit construction, temporary fence protection shall be provided at all times during construction and upon completion of the construction, the fence shall be rebuilt in its original or relocated position.</p> <p>The cost of all work herein described shall be borne by the Contractor. Should the contractor refuse or neglect to perform any work required by the above provisions within twenty-four hours after notification by the Employer to do so, the Employer reserves the right to perform the work and the cost thereof will be deducted from payment due to the Contractor.</p> <p>GCC 9.10-- Transmission, Telegraph and Telephone Lines: The Contractor shall make all necessary or required provisions concerning any interference with the operation or maintenance of traffic or service of any transmission, telegraph or telephone lines existing on the date of receiving bids, caused by the work of the Contractor under this Contract, all in a manner satisfactory to the owners or operators and to the Employer.</p> <p>The Contractor shall notify the Employers of such facilities of any damage, which is his responsibility and shall promptly settle proper claims. Pending settlement of such claims by the Contractor, an appropriate sum as determined by the Employer may be withheld from payments due to the Contractor until the matter is settled.</p> <p>The cost of providing and maintaining all necessary or required watchmen, signals, guards and temporary structures, of making any necessary repairs, replacements, or similar operations and all or any other costs required by this Sub-Clause shall be borne by the Contractor.</p> <p>GCC 9.11-- The Contractor shall be responsible for selecting and constructing appropriate communication means necessary for the executing of the project at his own expense. If required, the Employer will assist the Contractor in obtaining licences/permits from the concerned government agencies.</p> <p>GCC 9.12 -- Gasoline, oil and lubricants for construction equipment and vehicles are available in Nepal and the Contractor will not be permitted to import such products for use on the work.</p> <p>GCC 9.13-- The Contractor shall be responsible for the arrangement of water supply for drinking and construction purposes at his own cost.</p> <p>GCC 9.14 -- The Contractor shall be responsible for the arrangement of electricity supply for construction and any other purposes at his own cost.</p> <p>GCC 9.15-- Operation and maintenance The Contractor shall provide at least one operating and</p>
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		<p>maintenance expert at the site for a continuous period of three (3) months or any extension required thereof because of serious breakdown or any extensions of warranty period, from the commencement of the Defect Liability Period to train the local staff on the operation of various equipment.</p> <p>GCC 9.16-- Commissioning and pre-commissioning</p> <p>The Contractor shall provide sufficient, properly qualified personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature required to properly carry out Pre-commissioning, Commissioning and Guarantee Test all in accordance with the provisions of the Contract Agreement.</p>
Contract Price	11.1	<p>Supplementing the Clause as</p> <p>After the award of the Contract, the Contractor shall carry out the detail survey of the Substation, design and submit for approval the revised Price Schedule incorporating the actual quantities.</p>
	11.2	The Contract Price shall be fixed and not adjustable .
Securities	13.0	<p>13.3.1 The Contractor shall deliver the Performance Security of amount as per ITB 44.1, ITB 39.5 (if any others) of Bidding Document to the Employer within fifteen (15) days after receiving the Letter of Acceptance. The Performance Security shall be denominated in the types and proportions of currencies in which the Contract Price is payable.</p>
		<p>13.3.2 The performance security shall be in the form of the Bank Guarantee (Unconditional) attached hereto in Section IX, Contract Forms. The Performance Security shall be issued by any registered "A" class commercial Bank in Nepal , or a foreign bank counter guaranteed by any registered "A" class commercial Bank in Nepal, in complete accordance with the specimen provided herein.</p> <p>The performance security as required by the clause 13.3.1 above, shall be valid for period covering entire contract execution period and any extension thereof, defect liability period plus thirty days.</p>
		13.3.3. The performance security shall not be reduced on the date of the Operational Acceptance.
		<p>13.3.4 Add the following new Sub-Clause:</p> <p>"In case of award of the Contract to a Joint Venture, the performance security shall be submitted in the name of the Joint Venture and not in the name of the Lead Partner or any Partner(s) of the Joint Venture alone"</p>
Taxes and Duties	14.0	<p>Delete this Clause in its entirety and replace it with the following:</p> <p>14.1 In the country of Origin</p>

		<p>The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, Materials and Supplies to be used on or furnished under the Contract, and on the services performed under the Contract.</p> <p>14.2 In Nepal</p> <p>14.2.1 Unless otherwise specifically declared in the contract documents, the prices bid by the Contractor and its suppliers and subcontractors shall include business taxes and other taxes except VAT and Custom duty that may be levied in accordance with the laws and regulations in force or in effect in Nepal as of 30 days prior to the closing date for submission of tenders in the Employer's country on the Equipment, Plant, Materials and Supplies (permanent, temporary and consumables) acquired for the purpose of the Contract and on the services performed under the Contract. Whatsoever provisions made in the Contract document shall not relieve the Contractor, its suppliers and subcontractors from their responsibility to pay income tax that may be levied in the Employer's country on profits made by the Contractor, its suppliers and subcontractors in respect of the Contract.</p> <p>14.2.2 The Project is entitled for concessional 1% custom duty and VAT exemption for the import of Plant & Mandatory Spare Parts to be supplied from abroad in Price Schedule No. 1. The Contractor has to follow all the procedures to import Plant & Mandatory Spare Parts to be supplied from abroad in Price Schedule No. 1. The Contractor shall pay all the taxes and duties applicable at the point of entry (custom). Employer will refund such amount to the Contractor upon submission of the related original documents. However, Employer will not be responsible for any demurrage charges applicable due to delay in custom clearance.</p> <p>14.3 The unit bid price quoted in the Price Schedule Nos. 2 & 4 are exclusive of VAT. VAT in each supply/progress bill shall be paid to the Contractor and as per law of Nepal he will be responsible for depositing the same to the concerned Revenue office in Nepal.</p> <p>14.4 Tax Deduction at Source (TDS)</p> <p>As per the law of Nepal the Employer will deduct TDS at the rate as applicable at the time of execution of the contract from each payment to the Contractor and deposit to the Revenue office. The Contractor shall be provided with all details in this regard promptly. The Contractor shall be responsible for obtaining tax clearance before issuance of Final Acceptance Certificate or before releasing the final 5% retention amount. All firms carrying out works in Nepal are required to be registered at Inland Revenue office. The TDS shall be deducted from the contract amount as per the prevailing rules and regulation (i.e. Income Tax Act and Regulation) of Government of Nepal.</p> <p>14.5 Staff income tax</p>
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		<p>The Contractor's staff, personnel and laborers, and those of its subcontractors, will be liable to pay personal income taxes in the Employer's country irrespective of local or foreign nationals on income earned including salaries and wages as applicable under the laws and regulations of Nepal. The Contractor shall perform such duties in regard to Tax Deduction at Source (TDS) thereof as may be applicable by such laws and regulations.</p> <p>14.6 Contractor's Plant, Equipment, Materials and Supplies</p> <p>Notwithstanding the provision of this document, Contractor's Plant and Equipment, including essential tools and spare parts thereof, imported by the contractor for the sole purpose of executing the Contract, and taken out of Nepal upon completion of the Works shall, except for Plant and Mandatory Spare Parts to be supplied from abroad in Price Schedule No.1, be exempt from payment of customs duties and taxes levied in Nepal. However, the Contractor shall deposit the amount or provide a Bank Guarantee to the GoN, Customs Department equal to the amount of customs duties at the prevailing laws, rules and regulations of Nepal for those imported equipment, plant, materials and supplies at the time of import. The amount of the deposit so provided will be refunded in Nepalese Rupees, or the Bank guarantee cancelled by the Employer, after the submission to the Employer of the re-export certificate issued by the Customs Department.</p> <p>If the Contractor disposes of any Contract's Equipment, spare parts, materials or supplies in Nepal, it shall pay all customs duties and taxes applicable on such Items under the laws and regulations of Nepal in force at the time and shall repay to the Employer the amount of any customs duties and taxes which may have been reimbursed to the Contractor by the Employer in connection with importation of such items.</p> <p>Contractor shall re-export all the equipment, plant, materials, and supplies within 90(Ninety) days after completion of the project.</p> <p>14.6 The Contractor shall maintain records satisfactory to the Employer documenting use of all Plant, materials and supplies imported into and/or procured for the performance of the Works. If any of such plant, materials and/or supplies, imported into Nepal or otherwise supplied to the Project at a special or preferential rate of Customs Duties or taxes, are misused or found to be used or appropriated for any purpose other than the Project, the Contractor shall be held fully responsible, and liable to pay customs duties, VAT and other taxes and/or any penalties as may be imposed in accordance with the prevailing laws and regulations of Nepal.</p>
Licenses / Use of Technical Information	15.0	<p>Add the following second paragraph: Under Sub-clause 15.2.</p> <p>The Employer shall however shall have the right to reproduce any or all drawings, documents and other materials furnished to the Employer for the purpose of the Contract and in addition, if required, for operation and maintenance and other contracts of Employer.</p>

Subcontracting	19.0	<p>Add the following paragraph at the end of this sub Clause</p> <p>"The Contactor is not encouraged to add or the delete the list finalized during the contract signing unless special circumstance which is not in the control of the contractor is evidenced. If such situation arise, the qualification requirement of the manufacturer of the major items and sub-contractor of the major civil work, shall be as that stipulated in "Part I, "Evaluation and Qualification Requirement" of the bidding document.</p>
Design and Engineering	20.3.2	<p>Change "fourteen (14) days to "twenty-one (21) days in both paragraphs of this Sub-Clause.</p>
Procurement	21.0	<p>21.3.2 Add the following at the end of this Sub-Clause:</p> <p>The Employer shall in no way be responsible for the condition of road and access.</p> <p>21.3.4 Add the following at the end of this Sub-Clause:</p> <p>"The Contractor shall restore all such facilities, as far as possible, to its original condition at its own expense and to the satisfaction of the Owner of the Facilities." In case of any damage, the Contractor shall restore all such facilities, as far as possible, to its original condition at its own expense and to the satisfaction of the Employer."</p> <p>21.4 Custom Clearances;</p> <p>Add the following paragraph at the beginning of this Sub-Clause:</p> <p>The Contractor shall familiarize himself with the rules and regulations of Nepal with regard to customs, duties, taxes, importation and clearing of goods and equipment and the like and the Contractor shall follow the required procedures regardless of the relief provided by the Employer. The Employer will provide assistance whenever possible.</p>

Installations	22.0	<p>22.1.1 Add the following at the end of the second paragraph:</p> <p>The checking of any setting-out by the Employer shall not relieve the Contractor of his responsibility for the accuracy thereof.</p> <p>22.1.3 Add the following Sub Clause:</p> <p>Expatriate personnel engaged for work in Nepal may require work permit issued by the Nepalese Authorities. The Contractor shall be responsible for applying and obtaining such permits. Such applications shall be made in good time so as to enable the completion of the work in accordance with the approved Work Program. The Employer will assist the Contractor to obtain the permit.</p> <p>22.2.5 Working Hours</p> <p>Normal working hours are: The Contractor shall be responsible for following the normal working hours to specific location and rules.</p> <p>22.2.7 Health and Safety</p> <p>(d) The Contractor shall throughout the contract (including the Defect Liability Period):</p> <ul style="list-style-type: none"> (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) Provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor. <p>The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually</p>
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		<p>Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose.</p> <p>22.3.4 Add the Sub-Clause 22.3.4 "Duties on Contractor's Equipment, Plant, Materials and Supplies"</p> <p>Notwithstanding the provision of this document, Contractor's Plant and Equipment, including essential tools and spare parts thereof, imported by the contractor for the sole purpose of executing the Contract, and taken out of Nepal upon completion of the Works shall, except for Plant and Mandatory Spare Parts to be supplied from abroad in Price Schedule No.1, be exempt from payment of customs duties and taxes levied in Nepal. However, the Contractor shall deposit the amount or provide a Bank Guarantee to the GoN, Customs Department equal to the amount of customs duties at the prevailing laws, rules and regulations of Nepal for those imported equipment, plant, materials and supplies at the time of import. The amount of the deposit so provided will be refunded in Nepalese Rupees, or the Bank guarantee cancelled by the Employer, after the submission to the Employer of the re-export certificate issued by the Customs Department.</p> <p>If the Contractor disposes of any Contract's Equipment, spare parts, materials or supplies in Nepal, it shall pay all customs duties and taxes applicable on such items under the laws and regulations of Nepal in force at the time and shall repay to the Employer the amount of any customs duties and taxes which may have been reimbursed to the Contractor by the Employer in connection with importation of such items.</p> <p>Contractor shall re-export all the equipment, plant, materials, and supplies within 90(Ninety) days after completion of the project.</p> <p>22.4 .1 Add the following Sub-Clause</p> <p>Site Regulations and Safety</p> <p>The Contractor shall comply with all the National Legislatures, Environmental Acts, proposed Environmental legislatures and the proposed mitigation measures in preparing proposed site regulations and plan for approval.</p> <p>The Contractor shall take all reasonable steps to protect the environment on and off the Site and avoid damage or nuisance to persons to persons or to property of the public or others resulting from pollution, noise or other causes as a</p>
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		<p>consequence of his method of operation.</p> <p>During the progress of the Contract, the Contractor and his Sub-contractors shall abide at all times by all existing Acts on environmental protection and rules made there under, regulations, notifications bye-laws of the Government of Nepal, and any other law, bye-law, regulations that may be passed or notifications that may be issued in this respect in future.</p> <p>22.4.2 Add the following Sub - Clause</p> <p>Use of Explosives;</p> <p>No blasting or work involving the use of explosives will be permitted in the substation area or adjacent areas under this Contract.</p> <p>22.6 Add the following at the end of first paragraph:</p> <p>The materials to be removed shall be incinerated or disposed off at places which will not be unsightly or objectionable to the inhabitants of the area following all environmental requirements.</p>
Tests and Inspection	23.0	<p>23.2 Add the following at the end of this Sub-Clause:</p> <p>The Employer and the Project Manager or their designated representatives shall be entitled to attend at his own cost to witness the tests for all the equipments as specified in the Section 6- Employers Requirements (Technical Specifications) at Manufacturer's/Contractor's factory.</p> <p>23.3 Supplementing Sub Clause 23.3</p> <p>The Contractor shall intimate the Project Manager the detailed program about the tests and/or inspection and of the place and time thereof at least two (2) weeks in advance in case of domestic supplies & six (6) weeks in advance in case of foreign supplies.</p> <p>23.4 Supplementing Sub-Clause GC 23.4</p> <p>The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection within fifteen (15) days after completion of tests"</p> <p>23.6 Add the following at the end of this Sub-Clause:</p> <p>All costs incurred by the Employer including all travelling and</p>

		board and lodging expenses by the repetition of the tests or false call for tests shall be borne by the Contractor pursuant to GCC Sub-Clause 23.2. Any delay in delivery due to retest or false call shall not constitute a release of the Contractor from his responsibilities for delay.
Completions of Facilities	24.0	<p>24.2 Add the following paragraph at the end of this clause: If Appendix to the Contract Agreement titled "Scope of Works and Supply by the Employer " does not specify the personnel and other necessary materials required for the Pre-commissioning the facilities, the supply and management of same shall be the responsibility of the Contractor. The Contractor is responsible for providing the Pre-commissioning training to the NEA staffs if so requested by NEA and the cost for the same shall be deemed to have been included in the Price Schedule. The maximum number of NEA, Staffs to receive the pre-commissioning training from the contractor shall be 10 (ten).</p> <p>24.8 Delete this Sub-Clause in its entirety and replace by the following: The issue of the completion certificate does not relieve the Contractor from his responsibilities for the care and custody of the Facilities or the relevant parts thereof together with the risk of loss or damage thereto.</p>
Commissioning and Operational Acceptance	25.0	<p>25.1.2 Add "if so specified in corresponding Appendix (Scope of Works and Supply by the Employer)" at the end of the paragraph.</p> <p>25.2.2 The Guarantee Test of the Facilities shall be successfully completed within one week from the date of Completion.</p> <p>25.3.1(e) Add the following new Sub-Clause: Six (6) sets of as built drawings, operating and maintenance manuals and CD's, USB drives etc. as per Technical Specifications of the Bidding Documents are furnished.</p> <p>25.3.3 Change "seven (7) days" to "twenty one (21) days"</p> <p>25.3.4 Change "seven (7) days" to "twenty one (21) days"</p>
Completion Time Guarantee	26.0	26.2 Applicable rate for liquidated damages: 0.05 % of the

		<p>Contract price per each day per delay.</p> <p>Maximum deduction for liquidated damages: ten percent (10%) of the Contract Price.</p> <p>26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.</p>
Defect Liability	27.0	<p>27.2 Delete first paragraph of the Sub-Clause and replace with the following:</p> <p>The Defect Liability period shall be two(2) years from the date of Operational Acceptance.</p> <p>27.9 Change "Completion" in line 5 of the Sub Clause to "Operational Acceptance".</p> <p>27.11 Add this new Sub-Clause as follows:</p> <p>When the Defect Liability Period for the Facilities or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract for defects in the Facilities, the Employer shall issue within thirty (30) days from the date of expiration to the Contractor a Certificate to that effect.</p>
Transfer of Ownership	31.0	<p>31.1 Add "and upon endorsement of the dispatch documents in favor of the Employer." at the end of this Sub-Clause.</p> <p>31.4 Add the following at the end of this Sub-Clause:</p> <p>"Provided quantity of any Plant and Equipment specially stipulated in the Contract shall be the property of the Employer whether or not incorporated in the Facilities."</p>
Loss of Damage	33.0	33.1 Add "and defective design, material or workmanship of the Contractor" after "the supply and installation of the Facilities".
Insurance	34.0	34.1 (c) Add "including property of the Employer" after the word "property".
Change in Laws and Regulations	36.0	<p>36.1 Add the following after "Contract." in line 12 in this Sub-Clause:</p> <p>However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components, etc. by the Contractor.</p>
Force Majeure	37.0	<p>37.6 Replace "either party may terminate." in line 7-9 by "the dispute will be resolved in accordance with GC Clause 45." in this Sub-Clause.</p> <p>37.7 Delete this Sub-Clause in its entirety.</p>
Change in the Facilities	39.0	<p>39.1.2 Interchange the words "Employer" and "Project Manager" in lines 2 and 3 in this Sub-Clause.</p> <p>39.2.2 Delete this Sub-Clause in its entirety and replace with the following:</p>

		<p>"Upon instruction from the Project Manager, the Contractor shall prepare the 'Change Proposal' without any cost to the Employer".</p> <p>39.2.5 Replace "shall withdraw the proposed Change and shall notify the Contractor in writing thereof." at the end of the first paragraph by "and the Contractor shall agree on specific rates for valuation of the Change." in this Sub-Clause.</p> <p>39.4 Add this new Sub-Clause as follows: The scope of work under the package shall be as per the Section-6 "Employer's Requirement" of Bidding Documents. The quantity variation applicable for the existing scope shall be generally as per the following.</p> <p>a) The Employer reserves the right to increase or decrease the quantity of different items of the specified goods and services to the extent of fifteen percent (15%) of the revised contract price pursuant to the GC Clause 11.1, by way of suitable amendment to the Contract, without any change in unit rate/price and/or other terms and conditions of the Contract. However, the quantities of individual items of goods and services may vary up to any extent.</p>
Extension of Time for Completion	40.0	<p>40.2 Delete "as soon as reasonably practicable circumstance." And replace within 21 days of the identification of the event of such change known to the Contractor.</p>
Suspension	41.0	<p>41.1 Replace "request" by "instruct" in the line 1 of the first Paragraph.</p> <p>41.5 Add this new Sub-Clause as follows: If the Contractor chooses not to treat prolonged suspension as an omission or termination, the Employer shall, upon request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended work and of the plant which has been delivered to the Site and which is affected by suspension and the risk of loss or damage thereto shall thereupon pass to the Employer. After receipt of permission or an order to proceed, the Contractor shall after due notice to the Project Manager examine the works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Facilities that may have occurred during the suspension. Cost properly incurred by the Contractor, which would not have incurred but for the suspension shall be added to the Contract Price together with profit. The Contractor shall not be entitled for costs incurred in making good any deterioration, defect, or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures such as protect and secure and insure against any deterioration, loss or damage during suspension.</p>
Disputes and Arbitration	45	<p>45.3 The Place is Kathmandu, Nepal.</p>
Add this new Clause SCC 46 (Supplementing to GCC) Construction of		<p>46.1 The Contract will be signed in two (2) originals and the Contractor shall be provided with one signed original and the other will be retained by the Employer.</p> <p>46.2 The Contractor shall provide free of cost to the Employer all the engineering data, drawing and descriptive materials</p>

<u>Contract Document</u>		<p>submitted with the bid, in at least two (2) copies to form a part of the Contract immediately after Notification of Award.</p> <p>46.3 Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Employer with at least five (5) true copies of Contract Agreement within thirty (30) days after signing of the Contract.</p>
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Section 9 - Contract Forms

Table of Forms

Letter of Intent	2
Notification of Award	3
Contract Agreement	4
Appendix 1 - Terms and Procedures of Payment	7
Appendix 2 - Price Adjustment	9
Appendix 3 - Insurance Requirements	10
Appendix 4 - Time Schedule.....	14
Appendix 5 - List of Major Items of Plant and Services and List of Approved Subcontractors	15
Appendix 6 - Scope of Works and Supply by the Employer	16
Appendix 7 - List of Documents for Approval or Review	17
Appendix 8 - Functional Guarantees.....	18
Performance Security	19
Advance Payment Security	20

Letter of Intent

[on letterhead paper of the Employer]

Date:

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 ... [insert date]
.....for execution of the ... [insert name]
of the contract and identification number, as given in the Contract Data/SCC] to you as your bid price
..... [insert amount in figures and words] 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]

[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.]

Notification of Award

[Employer's letterhead]

Letter of Acceptance

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 the equivalent of **[amount in figures and words in the currency.....]**, as corrected in accordance with the Instructions to Bidders is hereby accepted in accordance with the Instruction to Bidders.

You are hereby instructed to contract 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:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made on the [*insert number*] day of [*insert month*], [*insert year*],

BETWEEN

(1) [*name of the employer*], a corporation incorporated under the laws of [*country of the employer*] and having its principal place of business at [*address of the employer*] (hereinafter called “the Employer”), and (2) [*name of the contractor*], a corporation incorporated under the laws of [*country of the contractor*] and having its principal place of business at [*address of the contractor*] (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. [*list of facilities*] (“the Facilities”) and the Contractor have agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1 Contract Documents

- 1.1 **Contract Documents** (Reference GCC Clause 2)
The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement and the Appendixes hereto
 - (b) Notification of Award-Letter of Acceptance
 - (c) Letter of Bid and Price Schedules submitted by the Contractor
 - (d) The Bid Addendum and Clarifications
 - (c) Special Conditions of Contract
 - (d) General Conditions of Contract
 - (f) Employer Requirements
 - (g) Other completed Bidding Forms submitted with the Letter of Bid
 - (h) Any other documents forming part of the Employer’s Requirements
 - (i) Any other documents shall be added here
- 1.2 **Order of Precedence** (Reference GCC Clause 2)
In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.
- 1.3 **Definitions** (Reference GCC Clause 1)
Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

Article 2 Contract Price and Terms of Payment

- 2.1 **Contract Price** (Reference GCC Clause 11)
The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of [*. . . amounts of foreign currency in words . . .*], [*. . . amounts in figures. . .*] as specified in Price Schedule No. 5 (Grand Summary), [*. . . amounts of local*

currency in words . . .], [*. . . amounts in figures. . .*], or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 **Terms of Payment** (Reference GCC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

Article 3 Effective Date

3.1 **Effective Date** (Reference GCC Clause 1)

The Effective Date upon which the period until the Time for Completion of the Facilities shall be counted from is the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor.
- (b) The Contractor has submitted to the Employer the performance security and the advance payment guarantee.
- (c) The Employer has paid the Contractor the advance payment.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

- 3.2 If the conditions listed under 3.1 are not fulfilled within three (3) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on and the Time for Completion and/or other relevant conditions of the Contract. The Contractor shall not however, benefit (in reckoning the Time for Completion) on account of its delay in providing the Performance Security or the Bank Guarantee for advance payment beyond the period provided in the Contract

Article 4 Communications

- 4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is: [*Employer's address*].
- 4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: [*Contractor's address*].

Article 5. Appendixes

- 5.1 The Appendixes listed in the attached List of Appendixes shall be deemed to form an integral part of this Contract Agreement.
- 5.2 Reference in the Contract to any Appendix shall mean the Appendixes attached hereto, and the Contract shall be read and construed accordingly.

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, for and on behalf of the Employer

[*Signature*]

[*Title*]

in the presence of

[*Signature*]

[*Title*]

Signed by, for and on behalf of the Contractor

[*Signature*]

[*Title*]

in the presence of

[*Signature*]

[*Title*]

APPENDIXES

Appendix 1 - Terms and Procedures of Payment

Appendix 2 - Price Adjustment

Appendix 3 - Insurance Requirements

Appendix 4 - Time Schedule

Appendix 5 - List of Major Items of Plant and Services and List of Approved Subcontractors

Appendix 6 - Scope of Works and Supply by the Employer

Appendix 7 - List of Documents for Approval or Review

Appendix 8 - Functional Guarantees

Appendix 9 Minutes of Post Bid Discussion

Appendix 10 Price Schedules

Appendix 1 - Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, based on the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

(A) Terms of Payment

Schedule No. 1 - Plant and Mandatory Spare Parts Supplied from Abroad

In respect of plant and mandatory spare parts supplied from abroad, the following payments shall be made in USD or NRs. as applicable.

Ten percent (10%) of the total CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and mandatory spare parts delivered to the site, as evidenced by delivery documents.

Fifty Percent (50%) of the total or pro rata CIP amount upon Incoterm "CIP", upon delivery to the carrier within forty-five (45) days after receipt of following invoice and documents through irrevocable letter of credit opened in favor of Contractor's bank:

- i) 6 copies of contractor's invoice certified by the Employer showing contract no. goods description, quantity, unit price and total amount.
- ii) Payment Authorization as per the specified format duly signed by the authorized official (s), designated by the government of Nepal to operate the Line of Credit.
- iii) Original and 6 copies of negotiable, clean, on-board bill of lading marked freight prepaid and 6 copies of non-negotiable bill of lading.
- iv) 6 copies of Detailed Packing list identify contents of each package.
- v) Insurance Policy/Certificate.
- vi) Manufacturer's/supplier's warranty certificate.
- vii) Dispatch authorization issued by the employer with the factory inspection report.
- viii) Certificate of origin

Thirty percent (30%) of the total or pro rata CIP or amount upon Incoterm "CIP," upon erection of equipments at site within 45 days after receipt of invoice as evidenced by the Employer's authorization of the Contractor's application showing contract no. goods description, quantity through irrevocable letter of credit opened in favor of Contractor's bank.

Five percent (5%) of the total or pro rata CIP or amount upon issue of the Completion Certificate, within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP or amount upon completion of defect liability period, within 45 days after receipt of invoice.

Schedule No. 2 - Plant and Mandatory Spare Parts Supplied from Within the Employer's Country

In respect of plant and mandatory spare parts supplied from within the Employer's country, the following payments shall be made in NRs. only.

Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and mandatory spare parts delivered to the site, as evidenced by delivery documents.

Fifty percent (50%) of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon delivery to the carrier within forty-five (45) days after receipt of following invoice and documents through irrevocable letter of credit opened in favor of Contractor’s bank: -

- i) 6 copies of contractor’s invoice certified by the Employer showing contract no. goods description, quantity, unit price and total amount.
- ii) Payment Authorization as per the specified format duly signed by the authorized official (s), designated by the government of Nepal to operate the Line of Credit
- iii) Original and 6 copies of negotiable, clean, on-board bill of lading marked freight prepaid and 6 copies of non-negotiable bill of lading.
- iv) 6 copies of Detailed Packing list identify contents of each package.
- v) Insurance Policy/Certificate.
- vi) Manufacturer’s / supplier’s warranty certificate.
- vii) Dispatch authorization issued by the employer with the factory inspection report.
- viii) Delivery certificate issued by Employer.

Thirty percent (30%) of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon erection of equipments at site within forty-five (45) days after receipt invoice as evidenced by the Employer’s authorization of the Contractor’s application showing contract no. goods description, quantity through irrevocable letter of credit opened in favor of Contractor’s bank.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon completion of defect liability period, within 45 days after receipt of invoice.

Schedule No. 3 - Design Services

The amount of Design Services should be built in the quoted price for Supply and Services.

Schedule No. 4 - Installation and Other Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made in **NRs. only by direct payment through Cheque.**

Ten percent (10%) of the total installation and other services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer’s authorization of the Contractor’s application, will be made monthly within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Completion Certificate, within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon completion of defect liability period, within 45 days after receipt of invoice.

(B) Payment Procedures:**The procedures to be followed in applying for certification and making payments shall be as follows:**

The procedures to be followed in applying for certification and making payments are as explained in above respective paras. The Employer shall make payments promptly within forty five (45) days of submission of an invoice by the Contractor.

Payment of Taxes & duties:

Provisions in PC 14 shall apply in respect to Taxes & Duties.

Additional Sub-Clause for Submission of Bills for Payment:

- i. All Payments for the works in part or full shall be based upon measurements or otherwise as per the Contract. Immediately after execution of foundation of any structure or otherwise, but before filling the trench or foundation, the Contractor shall take and record measurements in presence of the authorized representatives of the Employer.
- ii. All Measurements recorded in a Measurement Book (MB) issued by the Employer should be signed with date by the Contractor and the Employer.
- iii. The Value of work executed shall be determined by the Employer.
- iv. The Contractor seeking any payment shall submit the bills with the relevant MBs and other requisite documents, duly signed by the site representatives of the Employer, to the Employer. The Employer will then verify the bills and approve for release of payment.

Note: No interest shall be paid on delayed payment in terms of GC sub-clause 12.3

Appendix 2 - Price Adjustment

Not Applicable

Appendix 3 - Insurance Requirements

(A) Insurances To Be Taken Out By The Contractor

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefore) and to the construction equipment to be provided by the Contractor or its Subcontractors.

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
110% of total price for plant and equipment	(*)	Contractor	Manufacturer place/cargo warehouse	Site Delivery

(*) Excess 5% of claimed amount subject to minimum of NRs. 20,000 or its equivalent for Normal and NRs. 80,000 or its equivalent for act of God perils and collapse.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
110% of total price for plant and equipment	(*)	Contractor	Site Delivery	Final Acceptance

(*) Excess 5% of claimed amount subject to minimum of NRs. 10,000 or its equivalent for Normal and NRs. 30,000 or its equivalent for testing period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
NRs. 1,000,000 or its equivalent as in (b) above		Contractor's Employee	Commencement of work	Final Acceptance

NRs. 1,000,000 or its equivalent as in (b) above		Third Party Personnel	Commencement of work	Final Acceptance
NRs. 1,000,000 or its equivalent as in (b) above		Employer's Property	Commencement of work	Final Acceptance

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(B) Types of Insurance to Be Taken Out by the Employer (Not Applicable)

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurance policies.

Details:

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]

Appendix 4 - Time Schedule

4.1 Description of Facilities: Plant Design, Supply, Construction, Installation, Testing and Commissioning of 400 kV Dhalkebar Substation

Name of Facilities	Completion Time required by the Employer from the Effective Date	Completion date guaranteed by the bidder from the Effective Date
Plant Design, Supply, Construction, Installation, Testing and Commissioning of 400 kV Hetauda and Inaruwa Substations	Eighteen (18) Months	

- 4.2 The activity (ies) under the Contractor's programme for Project Completion shall be in the form of a master network (MNW) and shall identify the various activities like design, engineering, manufacturing, supply, installation, factory testing, transportation to site, site testing and commissioning, trial operation and Taking Over etc. of the Facilities or specific part thereof (where specific parts are specified in PC). The network shall conform to the above Project Completion Schedule. This master network will be discussed and agreed before Award in line with above, engineering drawing and data submission schedule shall also be discussed and finalized before Award.
- 4.3 The Employer reserves the right to request minor changes in the work schedule at the time of Award of Contract to the successful Bidder.
- 4.4 The successful Bidder shall be required to prepare detailed Network(s) and project implementation plans & programmes and finalize the same with the Employer as per the requirement specified in Technical Specifications, which shall form a part of the Contract. The detailed Network(s) and project implementation plans & programmes shall preferably be prepared in Primavera or in MS Project or in the latest Project Management tool as convenient to Employer.

Appendix 5 - List of Major Items of Plant and Services and List of Approved Subcontractors

A list of major items of plant and services is provided below.

The following Subcontractors and Manufacturers are approved for carrying out the item of the facilities indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Subclause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Services	Approved Subcontractors and Manufacturers	Nationality

Appendix 6 - Scope of Works and Supply by the Employer

The following personnel, facilities, works, and supplies will be provided or supplied by the Employer, and the provisions of GCC Clauses 10, 21, and 24 shall apply as appropriate.

All personnel, facilities, works, and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Subclause 18.2.

Unless otherwise indicated, all personnel, facilities, works, and supplies will be provided free of charge to the Contractor.

Personnel	Charge to Contractor (if any)
NONE	NONE

Facilities	Charge to Contractor (if any)
Arrangement of Power Interruption of Transmission Line, Distribution Lines and / or Substations.	as per the rules of NEA
The employer shall assist the contractor to obtain all permits, approval and/or Licenses from all Local, State or National government authorities or public service undertaking in the country where site is located.	The expenses to obtain all permits, approval and /or service licenses mentioned shall be borne by Contractor

Works	Charge to Contractor (if any)
NONE	NONE

Supplies	Charge to Contractor (if any)
Owner shall make available the auxiliary HT power supply (either 11 kV or 33 kV) from NEA. However, in case of failure of power due to any unavoidable circumstances, the contractor shall make his own necessary arrangements like diesel generator sets etc. at his own cost so that progress of work is not affected and Owner shall in no case be responsible for any delay in works because of non-availability of power.	The Contractor shall pay the Employer at the applicable tariff plus Employer's overheads, if any, for such use. Where such supplies are not available, the Contractor shall make his own arrangement for provision of any supplies he may require.

Appendix 7 - List of Documents for Approval or Review

Pursuant to GCC Subclause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Subclause 18.2 (Program of Performance), the following documents for

(A) Approval

As mentioned in the relevant chapter/Section of the Technical Specifications of the Bidding documents and the following

1. Work Program (Detail Work Schedule)
2. Work Procedure
3. Manufacturers, prior to placing of order
4. Design, calculations and drawings of Plant & Equipments
5. All Civil design and drawings
6.
7.
- 8 Any other documents as desired by the Employer

(B) Review

As mentioned in the relevant chapter/Section of the Technical Specifications of the Bidding documents and the following

1. Designed and calculation procedures for each component forming part of the Plant
2. Operations and maintenance instructions
3. Procedure for Test on Completion
4. Protection calculation / recalculation and setting.
5. Any other documents as desired by the Employer

Note:

Bidder shall furnish the exhaustive list, which shall be discussed and finalized for incorporation into the Contract Agreement.

Appendix 8 - Functional Guarantees

8.1 Loss Capitalization

The transformer/reactor losses will be capitalized as follows for evaluation purpose:

S.N.	Type of Losses	Capitalization Rate (US\$ per kW)	
		For Transformers	For Reactor
1	No load losses	4684	Not Applicable
2	Load losses	1180	1180
3	Auxiliary Losses	393	393

8.2 Guaranteed Transformers/reactors losses.

The Guaranteed values of transformer/reactor loss are as follows:

Required Functional Guarantee	Value of Functional Guarantee of the Proposed Plant and Equipment		
	No Load Loss (KW)	Load Loss (KW) at 75 Deg C	Auxiliary Loss (KW) at 75 Deg C
(1) 400/220/33 KV, 315 MVA, 3-Ph Autotransformer			
(2) 400/ $\sqrt{3}$ /220/ $\sqrt{3}$ /33 KV, 167 MVA, 1-Ph Autotransformer			
(3) 50 MVAR, 420kV Bus Shunt Reactor	Not Applicable		Not Applicable
(4) 33/0.4 kV, 630 KVA Station Transformer			Not Applicable

(i) Guaranteed values not reached.

If the individual losses of a transformer/reactors as measured during test exceeds the values guaranteed, then for each kilowatt of losses in excess of the losses guaranteed, an amount at the rates of twice the rates specified above for no-load losses, load-losses and Auxiliary Losses shall be deducted from the Contract Price of the successful Bidder.

(ii) Performance Guarantee

The performance figures quoted on Technical Data Sheet shall be guaranteed within the tolerances permitted by relevant standards listed under Part-II, Employer's Requirement, and shall become a part of the successful Bidder's Contract. In case of loss capitalization, no tolerance shall be permitted for the guaranteed value. The transformer/reactor will be rejected, if the measured no-load, load and Auxiliary Losses exceed the guaranteed value by over 15% provided that the total losses do not exceed 10% as specified.

Performance Security

..... *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*. (hereinafter called "the Contractor") has entered into Contract No. *reference number of the Contract*. datedwith 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 thirty days after the end of Defect Notification 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

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 name of the Contractor. (hereinafter 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, an advance payment in the sum name of the currency and amount in figures*. (. amount in words.) is to be made against an advance payment guarantee.

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.) 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.

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)

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 amount of the advance payment as specified in the Contract.

** 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".